

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-20405

NOE GARZA,

Hon. Matthew F. Leitman

Defendant.

/

JURY TRIAL - Volume 3

BEFORE THE HONORABLE MATTHEW F. LEITMAN
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Tuesday, November 15, 2022

APPEARANCES:

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1 Detroit, Michigan

2 Tuesday, November 15, 2022

3 at about 9:52 a.m.

4 — — —

5 (Court, Counsel and Defendant present.)

6 THE CASE MANAGER: All rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session, the Honorable
9 Matthew F. Leitman, United States District Judge, presiding.

10 You may be seated.

11 The Court calls Case No. 21-20405, United States of
12 America v. Noe Garza.

13 Counsel, please state your appearances for the
14 record.

15 MR. DePORRE: Good morning, Your Honor.

16 Jules DePorre on behalf of the United States. With me at
17 counsel table is Jessica Szuhkent, from the U.S. Attorney's
18 Office, and Brett Orvis, the case agent in this matter.

19 THE COURT: Good morning.

20 MR. LONGSTREET: Good morning. May it please this
21 Honorable Court, Charles Oliver Longstreet, II, P68205,
22 appearing on behalf of Noe Garza, who is present and seated
23 to my left.

24 THE COURT: Good morning. Welcome to both of you.

25 We are here for our second day of jury trial. I

1 had an opportunity to meet with counsel in chambers to iron
2 out the final jury instruction issues. The jury instructions
3 are being printed right now and will be ready to go.

4 My understanding from the discussions with counsel
5 is that, Mr. Longstreet, you and Mr. Garza do wish to call at
6 least one and maybe more witnesses; is that correct?

7 MR. LONGSTREET: That is accurate.

8 THE COURT: So my plan would be to bring our jury
9 back in, and you can call your witnesses. And it sounds
10 like, from our discussion, we don't anticipate a lengthy
11 defense case in terms of time; is that fair?

12 MR. LONGSTREET: Twenty minutes, max.

13 THE COURT: And my thought -- and then Mr. DePorre,
14 you were talking about a government rebuttal case, but also
15 not a long one?

16 MR. DePORRE: Correct, Your Honor.

17 THE COURT: So what I want to tell the jurors is my
18 plan is to get this case to them by lunch, which would mean
19 you guys will present -- start with the defense case, then
20 the government's rebuttal case, and by then, I should have my
21 set of jury instructions. I will give my instructions, and
22 then I will give them a break, so they come back fresh with
23 each of your closing arguments, and then we'll get the case
24 to them, and they can do their lunch. Does that work for
25 you?

1 MR. DePORRE: It does. There is one additional
2 matter; after the defense concludes with its two witnesses,
3 at some point I think it would be proper to voir dire the
4 defendant as to his election not to testify.

5 THE COURT: Okay. That's probably a good point.

6 MR. DePORRE: That should be done outside of the
7 presence of the jury, before I call the rebuttal witnesses.

8 THE COURT: We will do that. We'll take a very
9 short break at that point.

10 MR. DePORRE: Thank you, Your Honor.

11 THE COURT: That makes sense to me. Okay. Then I
12 probably won't take a break between my instructions and your
13 closings. Does that work for you?

14 MR. DePORRE: That's fine.

15 THE COURT: Mr. Longstreet.

16 MR. LONGSTREET: I'm ready.

17 MR. DePORRE: Will you print two extra copies of
18 the instructions for the parties?

19 THE COURT: Yes. I have them printing 20, so there
20 should be plenty for everybody. They'll be one for you guys,
21 and then for you, Mr. Longstreet, and Mr. Garza, too.

22 MR. DePORRE: Yesterday there was some discussion
23 about us asking --

24 THE CASE MANAGER: All rise for the jury.

25 THE COURT: We'll take that up in a minute.

1 (Jury entered at 9:56 a.m.)

2 THE COURT: Please be seated. Ladies and
3 gentlemen, let me start with an apology for the late start,
4 but I want to couple that apology with the good news. While
5 you guys have been in there for waiting for us, we have been
6 working hard to figure out the most efficient way to present
7 the case to you, and we made substantial progress, and right
8 now we are on target to get the case to you guys by
9 lunchtime, so we made a lot of progress while you guys were
10 in there. I don't want you to think we were out here, you
11 know, practicing our golf swing. We were actually doing
12 work, and the work that we were doing will inure to your
13 benefit. So thank you for your patience, but I do want to
14 apologize that you guys were sitting in there.

15 And this is the opportunity for Mr. Longstreet to
16 call any witnesses on behalf of Mr. Garza, if he wishes to do
17 so. Mr. Longstreet, would you like to call any witnesses?

18 MR. LONGSTREET: Yes. The defense would call two
19 witnesses in the matter, and the first will be
20 Mr. Blake Austin Parkes.

21 THE COURT: All right. Mr. Parkes, do you mind
22 coming up here and standing right in front of the bench just
23 for one moment, sir.

24 Would you raise your right hand.

25 Do you swear that the testimony you will provide

1 will be truth?

2 MR. PARKES: Yes.

3 THE COURT: Thank you. Mr. Parkes, will you settle
4 into the witness chair over here. And as you are settling
5 in, let me ask you to please keep your voice up and speak
6 slowly, so we can hear everything you have to say.

7 MR. PARKES: Yes, Your Honor.

8 THE COURT: Thank you.

9 BLAKE A. PARKES,
10 called at about 9:57 a.m., was examined and testified on his
11 oath as follows:

12 DIRECT EXAMINATION

13 BY MR. LONGSTREET:

14 Q. Good morning, sir.

15 A. Good morning.

16 Q. Can you please state your name for the record?

17 A. Blake Parkes.

18 Q. Mr. Parkes, I would like to direct your attention to the
19 day of November 2nd, 2022. Do you recall that day?

20 A. That, to the best of my knowledge, yeah, I've been
21 trying to remember it for a few days now, yes.

22 Q. Thank you. And on that day, were you approached by two
23 federal agents?

24 A. Yes, sir.

25 Q. Okay. And when you made contact with these federal

1 agents, you had discussion in reference to a 2008 white
2 Grand Prix?

3 A. Yes, I did.

4 Q. And at some point, did you own that 2008 white
5 Grand Prix.

6 A. Yes.

7 Q. Okay. And when you owned this 2008 white Grand Prix, at
8 some point did you sell the vehicle?

9 A. Yes, I did.

10 Q. Okay. And do you -- and when these agents came to see
11 you, did they provide you photographs of persons that you may
12 have sold the car to?

13 A. Yes, they showed me three pictures.

14 Q. Okay. Thank you. I'd like to show you what is going to
15 be marked as Defendant's Proposed Exhibit B for
16 identification purposes only.

17 (Defendant's Exhibit B marked for identification
18 purposes.)

19 BY MR. LONGSTREET:

20 Q. Sir, do you recognize the photograph on the screen?

21 A. Yes, I do.

22 Q. Okay. And is this the person you identified as the
23 person who purchased your vehicle?

24 A. Yes, it is.

25 Q. Does that fairly and accurately depict the photograph

1 that you were shown of the person that, possibly, you sold
2 this vehicle to?

3 A. I believe it is the same photo, yes.

4 MR. LONGSTREET: Thank you. The defense moves for
5 Exhibit B to be entered into evidence as Defendant's B.

6 THE COURT: Any objection?

7 MR. DePORRE: No, Your Honor.

8 THE COURT: Okay. That's admitted.

9 (Defendant's Exhibit B received into evidence.)

10 MR. LONGSTREET: Thank you.

11 BY MR. LONGSTREET:

12 Q. I want to direct your attention -- well, do you recall
13 when you sold this vehicle?

14 A. From the research I did, going back in my phone, I
15 believe it was in November of 2019.

16 Q. At a certain point, were you called by the police to
17 pick up this vehicle?

18 A. I received a letter from a police department. I tried
19 to do research on that as well, I don't know what department,
20 but I did receive a letter stating that the vehicle was
21 impounded in Owosso, and I did go down there to try to find
22 out what happened and why the car was there, but the bill was
23 so high on the vehicle, it was close to what I had sold the
24 car for, so I just left it there.

25 Q. Do you recall whether that was in November or December

1 of 2020?

2 A. It was at least two months after I had sold the car.

3 MR. LONGSTREET: Thank you. Nothing further.

4 THE COURT: Mr. DePorre, any questions?

5 CROSS-EXAMINATION

6 BY MR. DePORRE:

7 Q. You said you looked back in your phone, and you believe
8 you sold the car in November of 2019?

9 A. Yes, sir.

10 Q. And then you said it was Owosso that you got a call from
11 where the car was impounded?

12 A. I received a letter from a police department, but I
13 don't believe it was Owosso. I just know that the car got
14 impounded in Owosso -- it was a couple miles of where it was
15 left in a farmer's field.

16 Q. Now, where you are you from?

17 A. I'm in Linden.

18 Q. Do you know where Mundy Township is?

19 A. Yes, sir.

20 Q. Are you sure it wasn't Mundy Township?

21 A. As far as the police department that contacted me?

22 Q. No. Where the impound lot was.

23 A. No, absolutely not. It was -- it was on Corunna Road,
24 in Owosso. It's a tow yard that's no longer in business,
25 they are closed now. I tried contacting that tow yard for

1 information and I found out they were out of business.

2 Q. And that you think was also back in 2019?

3 A. I think that was in the early part of 2020 when I found
4 out the car was impounded.

5 Q. All right. And you said that you sold the car. How
6 much did you sell it for?

7 A. I believe it was \$900.

8 Q. And how much did that impound lot want for it?

9 A. It was close to that, 700, 800, I think, to get the car
10 back.

11 Q. And it wasn't worth that to you?

12 A. No. The car wasn't running, and it had some damage to
13 it that it didn't have when I sold it, that's why I left it
14 there.

15 Q. Do you buy and sell cars?

16 A. Sometimes, like a little side thing.

17 Q. Are you pretty good of deciding on what the value of the
18 car is?

19 A. I believe so, yeah.

20 Q. All right. So for you, it wasn't worth 700 bucks?

21 A. No.

22 Q. All right. After January of 2020, you don't know what
23 happened to that car, do you?

24 A. No clue.

25 Q. You have no idea if somebody else paid 700 bucks to get

1 it out of impound?

2 A. No, I do not know.

3 Q. You don't know if somebody traded it for something else?

4 A. Well, I did some research on that, too, and from what I
5 found out, that you have 30 days once you get that letter,
6 and then the tow yard can either sell the car or auction it
7 or scrap it. I don't know what they did with it after that.

8 Q. I want to show you an exhibit --

9 MR. DePORRE: Actually, you have to do it. This is
10 Government's Exhibit 5F. We would like to approach.

11 THE COURT: Go ahead.

12 BY MR. DePORRE:

13 Q. Do you recognize Government's Exhibit 5F?

14 A. No, sir.

15 Q. That's not your gun?

16 A. No, sir. I've never owned a pistol.

17 Q. And you have never left a gun inside a Grand Prix that
18 you later -- a Pontiac Grand Prix that you sold?

19 A. Positive, no, I've never left a gun in any vehicle.

20 Q. All right. Do you have any control over the person that
21 buys the car from you -- you can actually head back with the
22 gun. Thank you, Mr. Orvis.

23 Do you have any control over whether or not the
24 next person that buys the car from you or the person after
25 that or the person after that, if any have them register the

1 car, do you have any way to know that?

2 A. Aside from going physically to the Secretary of State
3 with them, no. But what I generally do when I sell a vehicle
4 is take -- I make the person buying the car sign off on it
5 and I take a photo of that title. I really tried my hardest
6 to find that for the two agents that stopped by my house, but
7 for some reason I believe it was an old phone and I don't
8 have that information for this car.

9 Q. But you have some information that shows you sold it
10 back in 2019?

11 A. Yeah, just -- I have the Facebook conversation from the
12 person that met me at the gas station, because I know I sold
13 the car at Meijer gas station, in Flint, and -- but whoever
14 had that Facebook profile and the person I was contacting
15 deleted it, and it deleted all of our conversation and any
16 information there.

17 Q. You said you are from Linden. Did you sell it at the
18 Meijer on Hill Road?

19 A. No, it was on Center Road, in Flint.

20 Q. The Burton Meijer?

21 A. Correct.

22 Q. All right. And you said you sold it to the person that
23 was up on the screen.

24 A. There were two people there that night, but I believe it
25 was the person on the screen that actually paid me and drove

1 off with the vehicle.

2 Q. Was the other person a woman?

3 A. No, it was a black male.

4 Q. And did that guy on the screen, did he have all the
5 money to buy the car --

6 A. No, he did not.

7 Q. -- at first?

8 A. No. He was borrowing money from the person that was
9 with him. I do remember that it took him quite a long time,
10 they were counting up small bills to make up the amount that
11 they needed.

12 Q. All right. When you sold the car, was the
13 battery -- was the battery mounted, was it affixed, or do you
14 have any idea whether or not it was loose in the car or was
15 it bracketed in?

16 A. I believe it was mounted correctly. I didn't do -- I
17 mean, this vehicle, I didn't own for a long period of time.
18 I bought the car at auction, and I mainly detailed it and put
19 tires on it and sold the vehicle.

20 Q. All right. And you have no idea what happened to it
21 after you sold it?

22 A. No, sir.

23 MR. DePORRE: Nothing further.

24 THE COURT: Mr. Longstreet.

25 MR. LONGSTREET: Nothing, thank you.

1 THE COURT: Thank you, Mr. Parkes. I appreciate
2 your time.

3 A. Thank you.

4 (Witness excused at 10:07 a.m.)

5 THE COURT: Mr. Longstreet, do you have any other
6 witnesses you wish to call?

7 MR. LONGSTREET: Defense would call
8 Agent Louis Valega.

9 THE COURT: Sir, would you come forward and raise
10 your right hand?

11 Do you swear that the testimony you are about to
12 give will be the truth?

13 OFFICER VALEGA: Yes, sir, I do.

14 THE COURT: Thank you. Welcome. Would you please
15 make yourself comfortable in the witness chair, and could I
16 ask you to please speak slowly and keep your voice up.

17 OFFICER VALEGA: Yes, sir.

18 THE COURT: Thank you.

19 OFFICER LOUIS VALEGA,
20 called at about 10:08 a.m., was examined and testified on his
21 oath as follows:

22 DIRECT EXAMINATION

23 BY MR. LONGSTREET:

24 Q. Good morning, sir.

25 A. Good morning.

1 Q. Please state your name and occupation for the record.

2 A. My name is Louis Valega. I'm employed with the Michigan
3 State Police.

4 Q. Sir, were you so employed on November 2nd, 2022?

5 A. Yes, sir, I was.

6 Q. And part of your duties with the Michigan State Police,
7 did you happen to come in contact, on that day, with a person
8 by the name of Blake Austin Parkes?

9 A. Yes, I did.

10 Q. And, sir, did you make contact with Blake Austin Parkes
11 as a part of an investigation in the case of the
12 United States v. Noe Garza?

13 A. Yes, sir, I did.

14 Q. And, sir, did you go to this particular location for a
15 specified reason?

16 A. Yes, sir, I did.

17 Q. And what was that reason?

18 A. Mr. Parkes was the registered owner in LEIN, which is
19 the Law Enforcement Information Network, for the 2008 white
20 Pontiac Grand Prix.

21 Q. And he was the registered owner in LEIN on this
22 particular vehicle, November 2nd of 2022, correct?

23 A. Yes, sir.

24 Q. Thank you. And, sir, as a part of your investigation
25 into the United States v. Noe Garza, did you present to

1 Mr. Parkes three photographs?

2 A. Yes, sir, I did.

3 Q. And in those three photographs -- I would like to show
4 you what has been admitted as Defendant's B. Do you
5 recognize the photograph that is depicted on the screen?

6 A. Yes, I do.

7 Q. And, sir, could you identify who this person is in this
8 photograph?

9 A. That is Meldrum Allen.

10 Q. Thank you. And is Meldrum Allen also a part of the
11 investigation into United States v. Noe Garza?

12 A. He is related, yes.

13 Q. Thank you. And you are aware he was arrested with
14 Mr. Garza on November 26th, 2020?

15 A. Yes, sir.

16 Q. Sir, as part of your investigation into this 2008 white
17 Grand Prix, did you receive information that the vehicle was
18 possibly sold in 2020?

19 MR. DePORRE: Objection, Your Honor.

20 THE COURT: What's the basis of the objection?

21 MR. DePORRE: Hearsay.

22 THE COURT: Let me see you guys at sidebar for a
23 second. Can you take that down while we are --

24 (Sidebar conference held on the record

25 at 10:11 a.m. as follows:

1 THE COURT: What is this? You want to ask him what
2 a witness told him it was sold in 2020.

3 MR. LONGSTREET: Whether he received information or
4 whether he learned that the vehicle was sold in 2020. It's
5 in his report.

6 THE COURT: Isn't that hearsay?

7 MR. LONGSTREET: It doesn't go to the truth of the
8 matter asserted. It goes to the extent of his investigation.

9 THE COURT: It seems to me that it goes to the
10 truth of the matter asserted.

11 MR. LONGSTREET: That the vehicle was purchased
12 in 2020 versus 2019?

13 THE COURT: You want to establish the fact that it
14 was sold in 2020.

15 MR. LONGSTREET: That's correct.

16 THE COURT: So it seems to me, this is being
17 offered for the truth of that assertion.

18 MR. LONGSTREET: Let me see if I can get around
19 that.

20 THE COURT: Do you want to try here, before in
21 front of the jury?

22 MR. LONGSTREET: Sure.

23 THE COURT: Who do you believe told him it was sold
24 in 2020?

25 MR. LONGSTREET: Mr. Parkes.

1 THE COURT: Why didn't you ask Parkes that? You
2 had the live witness right there.

3 MR. LONGSTREET: I did, who testified it was
4 in 2019. I guess I should have refreshed his recollection as
5 to -- well, there would be no reason to refresh his
6 recollection, because he didn't say his memory needed to be
7 refresh. He just said he remembered based on the information
8 that he looked at, that it was in 2019.

9 THE COURT: My view is, I don't -- first of all, I
10 think it is hearsay and, second of all, I think that Parkes
11 is -- if the source of this information is Parkes?

12 MR. LONGSTREET: Yes.

13 THE COURT: He would have been the right person to
14 ask, and to the extent that this guy is offering a different
15 version from Parkes, he's impeaching the other witness. So
16 mainly, I think it's hearsay and I'm going to sustain the
17 objection.

18 MR. LONGSTREET: Okay.

19 THE COURT: Okay.

20 (Sidebar conference concluded at 10:13 a.m.)

21 THE COURT: Okay.

22 MR. LONGSTREET: Nothing further of this witness.
23 Thank you.

24 THE COURT: Thank you.

25 Mr. DePorre, any questions?

1 MR. DePORRE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. DePORRE:

4 Q. Trooper Valega, good morning.

5 A. Good morning, sir.

6 Q. I just have one question for you. What is
7 Meldrum Allen's middle name?

8 A. Reginald, to my knowledge.

9 Q. Do you know if he uses the nickname Reggie?

10 A. I have heard him -- I have heard Reggie Allen as a
11 nickname for him, yes.

12 MR. DePORRE: I have nothing further.

13 THE COURT: Mr. Longstreet.

14 MR. LONGSTREET: Nothing. Thank you.

15 THE COURT: Okay. Thank you, Mr. Valega.

16 (Witness excused at 10:14 a.m.)

17 THE COURT: Mr. Longstreet, any other witnesses?

18 MR. LONGSTREET: At this time the defense closes
19 its case in chief.

20 THE COURT: Okay. Ladies and gentlemen, for
21 procedural reasons, we are going to take a very short break
22 here, and I do mean very short, and then we will bring you
23 right back and we will keep moving. Thank you for your
24 cooperation.

25 THE CASE MANAGER: All rise for the jury.

1 (Jury excused at 10:14 a.m.)

2 THE COURT: Please be seated.

3 Mr. Garza, can you scoot to the microphone? You
4 can stay seated; do you mind taking off your mask? I want to
5 chat with you for a moment.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Garza, do you understand that in
8 this trial, you have an absolute right to testify in your own
9 defense, if you wish to do so? Do you understand that sir?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And have you had a sufficient
12 opportunity to talk to Mr. Longstreet and to consider his
13 advice about whether you should testify in your own defense
14 here?

15 THE DEFENDANT: I have, Your Honor.

16 THE COURT: Has he answered all of your questions
17 on that issue?

18 THE DEFENDANT: He has.

19 THE COURT: Have you had enough time to think about
20 that issue?

21 THE DEFENDANT: I have, Your Honor.

22 THE COURT: And based on your own thoughts on the
23 matter and your discussions with Mr. Longstreet, have you
24 decided whether you wish to testify in your own defense here?

25 THE DEFENDANT: I have decided.

1 THE COURT: What is your decision?

2 THE DEFENDANT: I'm not going to testify.

3 THE COURT: Thank you. Mr. DePorre, any other
4 questions that you wish me to ask of Mr. Garza?

5 MR. DePORRE: No, Your Honor.

6 THE COURT: Mr. Longstreet, any questions that you
7 want to ask, to make a fuller record in that regard?

8 MR. LONGSTREET: No.

9 THE COURT: Okay. All right. So it seems to me,
10 is the next step, Mr. DePorre, your rebuttal case?

11 MR. DePORRE: It is, Your Honor.

12 THE COURT: And remind me what this is, it is a
13 pretty short case?

14 MR. DePORRE: It is. It is basically playing
15 excerpted clips of the interview between Steven Fisher and
16 Mr. Garza, and I will be presenting that testimony through
17 the case agent.

18 THE COURT: All right. These are different clips
19 than we heard in the case in chief?

20 MR. DePORRE: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. DePORRE: At this point, Your Honor, it has
23 come to my attention Mr. Parkes is still in the courtroom,
24 and I just want him to know he's free to go.

25 MR. LONGSTREET: Yes.

1 THE COURT: Mr. Parkes, I'm sorry.

2 MR. DePORRE: He's welcome to stay.

3 THE COURT: Thank you for coming, Mr. Parkes, I
4 appreciate it. I thought he was interested in hearing what I
5 had to say.

6 MR. DePORRE: If he stayed during jury
7 instructions, he's truly interested.

8 THE COURT: My plan will be to bring them back in
9 and hear the government's rebuttal case, which seems like it
10 is going to be pretty short, and then I will give them my
11 instructions and we will go right into closing arguments. Is
12 that good for you, Mr. DePorre?

13 MR. DePORRE: Very good.

14 THE COURT: Mr. Longstreet.

15 MR. LONGSTREET: Yes. However, I do need to, I
16 believe, procedurally, renew my Rule 29 motion.

17 THE COURT: Is now the time to do it?

18 MR. LONGSTREET: I thought it would have to be
19 after the closing of the prosecution's case in chief, and
20 then again at closing of the defense's case in chief.

21 MR. DePORRE: I actually think it is at the close
22 of my case in chief and then at the end of trial, after
23 there's a verdict.

24 THE COURT: Yeah. Just in case it needed to be
25 done now, I will treat this as you renewing it and I will

1 continue to reserve it. But I think Mr. DePorre is correct,
2 I think that the -- I think you've raised it at the
3 appropriate time at the end of the government's case, and I
4 think it can be made again, or renewed, I'm just looking at
5 the rule, within 14 days after the verdict.

6 MR. LONGSTREET: Okay. I thought it was actually
7 twice during trial.

8 THE COURT: But I think you are covered.

9 MR. LONGSTREET: Very good. Thank you.

10 THE COURT: All right. Holly, let's bring them
11 back.

12 THE CASE MANAGER: All rise for the jury.

13 (Jury entered at 10:18 a.m.)

14 THE COURT: Please be seated. Welcome back.

15 Mr. DePorre, does the government wish to present
16 any rebuttal case?

17 MR. DePORRE: It does, Your Honor.

18 THE COURT: Please proceed.

19 MR. DePORRE: Thank you, Your Honor. The
20 government calls Detective Brett Orvis.

21 THE COURT: I'll swear you in, again, just in case.
22 Do you swear that the testimony you are about to
23 give will be the truth?

24 OFFICER ORVIS: I do.

25 THE COURT: Thank you. Please join us. You have

1 heard me say several times, please speak up and speak slowly,
2 so please do that.

3 OFFICER ORVIS: Yes, sir.

4 OFFICER BRETT ORVIS,
5 called at about 10:19 a.m., was examined and testified on his
6 oath as follows:

7 DIRECT EXAMINATION

8 BY MR. DePORRE:

9 Q. I will make you respell your last name in case.

10 A. Yes. I'm Sergeant Brett Orvis, O-R-V-I-S.

11 Q. Remind us about your involvement in this case?

12 A. Yes. So I am a task force officer with the Federal
13 Bureau of Investigation, in Flint. I was responsible for
14 coordinating and prosecuting this case.

15 Q. And you weren't involved in the initial investigation,
16 were you?

17 A. No, I was not.

18 Q. Did you receive some of the evidence that was gathered?

19 A. I did.

20 Q. And did you receive a recording of an interview between
21 the defendant and the officer that initially conducted the
22 investigation, Steve Fisher?

23 A. Yes, I did.

24 Q. Did you review that video?

25 A. I have.

1 Q. And have you done it more than once?

2 A. Yes.

3 Q. All right. And have you -- can you identify the people
4 speaking?

5 A. Yes.

6 Q. All right. I would ask you to take a look at -- would
7 you pull up Government's Exhibit 15A. Don't play it just
8 yet.

9 Now, in the video, at some point did Mr. Garza talk
10 about picking up other people or driving other people to
11 Meijer?

12 A. He does.

13 Q. And who does he drive -- who does he say -- excuse
14 me -- who does he say that he drives to Meijer?

15 A. He makes reference to Reggie, to giving him a ride -- or
16 that he wanted a ride to Meijer.

17 Q. And then was there somebody else that he references that
18 was with Reggie?

19 A. Yes, Mr. Hutchins.

20 Q. All right. I would like to now ask you to listen to
21 Government's Exhibit 15A.

22 (Video played for the jury.)

23 BY MR. DePORRE:

24 Q. All right. Who asked Garza to take them to Meijer?

25 A. Reggie asked for a ride to Meijer.

1 Q. And did Garza say that he asked Reggie to take him to
2 Meijer?

3 A. No, he did not.

4 Q. And did Garza say that his clothes -- all of his clothes
5 were in the car?

6 A. Yes. He makes reference to all of his clothes being in
7 his vehicle.

8 Q. All right. Now I'd like to you play Government's
9 Exhibit 15 B -- actually don't play it yet. Sorry. I jumped
10 the gun.

11 At some point during the interview that you
12 reviewed, does Mr. Garza talk about a vest?

13 A. Yes.

14 Q. And what is that vest that he's referencing?

15 A. It is a weight vest. Originally, it was believed to be
16 a ballistics vest, but it was later determined to be a weight
17 vest.

18 Q. All right. And during the course of him discussing
19 that, does he refer to the car -- the white Pontiac Grand
20 Prix?

21 A. Yes.

22 Q. And what does he call that?

23 A. He calls it my car.

24 Q. I would now like to play Government's Exhibit 15B.

25 (Audio played for the jury.)

1 BY MR. DePORRE:

2 Q. Did you hear him also reference the title?

3 A. Yeah, he said the title was in the car.

4 Q. And did he -- what pronoun did he use to reference the
5 title? How did he refer to the title?

6 A. My car.

7 Q. All right. Would you just play, like, the last four
8 seconds of 15B -- five seconds?

9 (Audio played for the jury.)

10 BY MR. DePORRE:

11 Q. All right. Would you next play Government's
12 Exhibit 15C? During the call, did he talk about the vest
13 being in his car for an extended period of time?

14 A. Yes.

15 Q. All right. Would you play 15C?

16 (Video played for the jury.)

17 THE COURT: You said in your question during the
18 call. Did you mean during the interview?

19 MR. DePORRE: I did. Thank you for the
20 clarification.

21 THE COURT: Okay.

22 BY MR. DePORRE:

23 Q. Now, at some point during the interview, we heard that
24 Officer Fisher asked Mr. Garza, whose gun did I find? Did
25 Mr. Garza reference the vehicle during his answer to that

1 question?

2 A. Yes.

3 Q. All right. Would you play Government's Exhibit 15D?

4 (Video played for the jury.)

5 BY MR. DePORRE:

6 Q. Did you hear, "They didn't have no guns on them when
7 they got in my car"?

8 A. Yes, that's exactly what he said, yes.

9 Q. During the interview, did he also talk about processing
10 a marijuana substance called keif?

11 A. Yes.

12 Q. What did he say he used to process that?

13 MR. LONGSTREET: I'm going to object to the
14 relevance.

15 MR. DePORRE: I can --

16 THE COURT: Response.

17 MR. DePORRE: The firearm in this case was found in
18 a mesh bag, and the defendant used a mesh bag to process
19 keif, so that's the relevance.

20 THE COURT: Okay. Overruled.

21 Go ahead.

22 MR. DePORRE: Would you play Government's
23 Exhibit 15E?

24 (Video played for the jury.)

25 MR. DePORRE: All right. I have no further

1 questions.

2 THE COURT: Mr. Longstreet.

3 CROSS-EXAMINATION

4 BY MR. LONGSTREET:

5 Q. Sir, we have seen multiple pictures of this mesh bag,
6 correct?

7 A. Yes.

8 Q. And there's no marijuana residue or anything that
9 suggests that Mr. Garza used that bag to make keif, correct?

10 A. No.

11 Q. Thank you. Now, this weight vest we keep talking about,
12 it's a weight vest to develop core strength, right?

13 A. I'm not sure what it was being used for.

14 Q. But it is a weighted vest?

15 A. It is a weighted vest.

16 Q. And it is for fitness, right?

17 A. That could be.

18 Q. But most certainly, it is not a bulletproof vest?

19 A. It is not a ballistics vest.

20 Q. And it is not going to stop any bullets?

21 A. No.

22 Q. Okay. Secondly, we talked about the video with comment,
23 the title was in the car, correct?

24 A. Yes.

25 Q. And you are aware that, based on your review of this

1 case, that in order for somebody to get the car back, they
2 would have had to have the title, right?

3 A. A signed title, yes.

4 Q. So tell me, if he was talking about this particular car,
5 how could they get the car back if the title was inside the
6 car when he got arrested?

7 A. I'm not aware of the details of that.

8 Q. Right.

9 THE COURT: Anything else?

10 MR. LONGSTREET: Nothing. Thank you.

11 THE COURT: Mr. DePorre.

12 MR. DePORRE: No rebuttal, Your Honor.

13 THE COURT: Okay. Thank you.

14 (Witness excused at 10:29 a.m.)

15 THE COURT: Is that the close of the government's
16 rebuttal case?

17 MR. DePORRE: It is.

18 THE COURT: Okay. All right. Ladies and
19 gentlemen, what we are going to do now is move into jury
20 instructions and closing arguments, so I'm going to do my magic
21 trick; I'm going to ask Holly to come out. We are going to
22 pass out to you guys -- everybody's going to get two
23 documents, one is going to be a set of the jury instructions,
24 so you can read along with me, and everybody is also going to
25 get a copy of the verdict form.

1 So, Holly, can you share these with the jurors and
2 then a couple to each counsel table, please.

3 MR. DePORRE: Judge, while these are being
4 distributed, could we have a brief sidebar?

5 THE COURT: Sure.

6 (Sidebar conference held on the record
7 at 10:30 a.m. as follows:

8 MR. DePORRE: Before the jury came out, I raised an
9 issue about an additional instruction, and I wrote myself a
10 sticky note. It was on the issue of marijuana. You asked me
11 to include that in my remarks about the argument that he's
12 not charged with any marijuana offenses. I thinks that's
13 sufficiently -- I intend to include that in closing, as well.
14 I think it has been sufficiently addressed, but I had
15 suggested earlier, possibly the Court providing a limiting
16 instruction.

17 THE COURT: I will say, at the end of the written
18 instruction that I have here, I will orally advise them, even
19 though it is not on the papers, that this case is not about
20 marijuana, and he's not charged with marijuana.

21 MR. DePORRE: Thank you.

22 THE COURT: Is that okay, Mr. Longstreet?

23 MR. LONGSTREET: Yes.

24 THE COURT: Okay.

25 (Sidebar conference concluded at 10:31 a.m.)

1 THE COURT: Ladies and gentlemen, the instructions
2 have been given to you so you can read along with me and help
3 you follow. What I'm going to do now is give you the
4 instructions up to instruction number 22. When I finish 22,
5 I'm going to turn it over to the lawyers to give their
6 closing arguments, and when they are done, I will give you
7 the final instructions. Please listen very carefully.

8 Members of the jury, now it is time for me to
9 instruct you about the law that you must follow in deciding
10 this case. I will start by explaining your duties and the
11 general rules that apply in every criminal case. Then I will
12 explain some rules that you must follow in evaluating
13 particular testimony and evidence. Then I will explain the
14 elements or parts of the crimes that the defendant is accused
15 of committing. And last, I will explain the rules that you
16 must follow during your deliberations in the jury room, and
17 the possible verdicts that you may return. Please listen
18 very carefully to everything that I say.

19 You have two main duties as jurors. The first one
20 is to decide what the facts are, from the evidence that you
21 saw and heard here in court. Deciding what the facts are is
22 your job, and not mine, and nothing that I have said or done
23 during this trial was meant to influence your decision about
24 the facts in any way.

25 Your second duty is to take the law that I give

1 you, apply it to the facts, and decide if the government has
2 proved that the -- proved the defendant guilty beyond a
3 reasonable doubt. It is my job to instruct you about the
4 law, and you are bound by the oath that you took at the
5 beginning of the trial, to follow the instructions that I
6 give you, even if you personally disagree with them.

7 This includes the instructions that I gave you
8 before and during the trial, and these instructions that I am
9 now providing. All of the instructions are important, and
10 you should consider them together, as a whole.

11 The lawyers may talk about the law during their
12 arguments, but if what they say is different from what I say,
13 you must follow what I say. What I say about the law
14 controls. Perform these duties fairly. Do not let any bias,
15 sympathy or prejudice that you may feel toward one side or
16 the other influence your decision in any way.

17 As you know, the defendant has pleaded not guilty
18 to the crimes charged in the indictment. The indictment is
19 not any evidence, at all, of guilt, it is just the formal way
20 that the government tells the defendant what crimes he's
21 accused of committing. It does not even raise any suspicion
22 of guilt.

23 Instead, the defendant starts the trial with a
24 clean slate, with no evidence, at all, against him, and the
25 law presumes that he is innocent. This presumption of

1 innocence stays with him, unless the government presents
2 evidence here in court that overcomes the presumption and
3 convinces you, beyond a reasonable doubt, that he is guilty.
4 This means that the defendant has no obligation to present
5 any evidence at all, or to prove to you, in any way, that he
6 is innocent. It is up to the government to prove that he is
7 guilty, and this burden stays on the government from start to
8 finish. You must find the defendant not guilty, unless the
9 government convinces you, beyond a reasonable doubt, that he
10 is guilty.

11 The government must prove every element of the
12 crimes charged, beyond a reasonable doubt. Proof beyond a
13 reasonable doubt does not mean proof beyond all possible
14 doubt. Possible doubts or doubts based purely on speculation
15 are not reasonable doubts. A reasonable doubt is a doubt
16 based on reason and common sense. It may arise from the
17 evidence, the lack of evidence, or the nature of the
18 evidence.

19 Proof beyond a reasonable doubt means proof which
20 is so convincing that you would not hesitate to rely and act
21 on it in making the most important decisions in your own
22 lives. If you are convinced that the government has proved
23 the defendant guilty beyond a reasonable doubt, say so by
24 returning a guilty verdict. If you are not convinced, say so
25 by returning a not guilty verdict.

1 You must make your decision based only on the
2 evidence that you saw and heard here in court. Do not let
3 rumors, suspicions or anything else that you may have seen or
4 heard outside of court influence your decision in any way.

5 The evidence in this case includes only what the
6 witness said while they were testifying under oath, the
7 exhibits that I allowed into evidence, and the stipulations
8 that the lawyers agreed to. Nothing else is evidence.
9 Lawyers' statements and arguments are not evidence. Their
10 questions and objections are not evidence. My legal rulings
11 are not evidence, and my comments and questions are not
12 evidence.

13 During the trial, I did not let you hear the
14 answers to some of the questions that the lawyers asked, and
15 sometimes I ordered you to disregard things that you saw or
16 heard, or I struck things from the record. You must
17 completely ignore all of these things. Do not even think
18 about them. Do not speculate about what a witness might have
19 said. These things are not evidence, and you are bound by
20 your oath not to let them influence your decision in any way.
21 Make your decision based only on the evidence as I have
22 defined it here, and nothing else.

23 You are to consider only the evidence in this case.
24 You should use your common sense in weighing the evidence.
25 Consider the evidence in light of your everyday experience

1 with people and events and give it whatever weight you
2 believe it deserves. If your experience tells you that
3 certain evidence reasonably leads to a conclusion, you are
4 free to reach that conclusion.

5 In our lives, we often look at one fact and
6 conclude from it that another fact exists. In law, we call
7 this an inference. A jury is allowed to make reasonable
8 inferences, unless otherwise instructed. Any inferences you
9 make must be reasonable and must be based on the evidence in
10 the case. The existence of an inference does not change or
11 shift the burden of proof from the government to the
12 defendant.

13 Now, some of you may have heard the terms, direct
14 evidence and circumstantial evidence. Direct evidence is
15 simply evidence like the testimony of an eyewitness, which,
16 if you believe it, directly proves a fact. If a witness
17 testified that he saw it raining outside and you believed
18 him, that would be direct evidence that it was raining.

19 Circumstantial evidence is simply a chain of
20 circumstances that indirectly proves a fact. If somebody
21 walked into the courtroom wearing a raincoat covered with
22 drops of water, and carrying a wet umbrella, that would be
23 circumstantial evidence from which you could conclude that it
24 was raining.

25 It is your job to decide how much weight to give

1 the direct and circumstantial evidence. The law makes no
2 distinction between the weight that you should give to either
3 one, and does not say that one is any better evidence than
4 the other. You should consider all of the evidence, both
5 direct and circumstantial, and give it whatever weight you
6 believe it deserves.

7 Another part of your job as jurors is to decide how
8 credible or believable each witness was. This is your job,
9 not mine. It's up to you to decide if a witness's testimony
10 was believable and how much weight you think it deserves.
11 You are free to believe everything that a witness said, or
12 any part of it, or none of it at all, but you should act
13 reasonably and carefully in making these decisions.

14 Let me suggest some things for you to consider in
15 evaluating each witness's testimony. Ask yourself if the
16 witness was able to clearly see or hear the events?
17 Sometimes even an honest witness may not have been able to
18 see or hear what was happening and may make a mistake. Ask
19 yourself how good the witness's memory seemed to be. Did the
20 witness seem able to accurately remember what happened? Ask
21 yourself if there was anything else that may have interfered
22 with the witness's ability to perceive or remember the
23 events. Ask yourself how the witness acted while testifying.
24 Did the witness appear honest or did the witness appear to be
25 lying? Ask yourself if the witness had any relationship to

1 the government or the defendant or anything to gain or lose
2 from the case that might influence the witness's testimony.
3 Ask yourself if the witness had any bias or prejudice or
4 reason for testifying that might cause the witness to sly --
5 to lie or slant the testimony in favor of one side or the
6 other. And ask yourself how believable the witness's
7 testimony was, in light of all of the other evidence. Was
8 the witness's testimony supported or contradicted by other
9 evidence that you found believable? If you believe that a
10 witness's testimony was contradicted by other evidence,
11 remember that people sometimes forget things, and that even
12 two honest people who witness the same event, may not
13 describe it exactly the same way.

14 These are only some of the things that you may
15 consider in deciding how believable each witness was. You
16 may also consider other things that you think shed some light
17 on the witness's believability. Use your common sense and
18 your everyday experience in dealing with other people, and
19 then decide what testimony you believe and how much weight
20 you think it deserves.

21 Another point about the witnesses. Sometimes
22 jurors wonder if the number of witnesses who testified makes
23 any difference. Do not make any decisions based only on the
24 number of witnesses who testified. What is more important is
25 how believable the witnesses were and how much weight you

1 think their testimony deserves. Concentrate on that, not the
2 numbers.

3 There is one more general subject that I want to
4 talk to you about before I begin explaining the elements of
5 the crimes charged. The lawyers for both sides objected to
6 some of the things that were said or done during the trial.
7 Do not hold that against either side. The lawyers have a
8 duty to object whenever they think that something is not
9 permitted by the Rules of Evidence. Those rules are designed
10 to make sure that both sides receive a fair trial. And do
11 not interpret my rulings on their objection as any indication
12 of how I think the case should be decided. My rulings were
13 based on the Rules of Evidence, not on how I feel about the
14 case. Remember that your decision must be based only on the
15 evidence that you saw and heard here in court.

16 That concludes the part of my instructions
17 explaining your duties and the general rules that apply in
18 every criminal case. In a moment, I will explain the
19 elements of the crimes that the defendant is accused of
20 committing, but before I do that, I want to emphasize that
21 the defendant is only on trial for the particular crimes
22 charged in the indictment. Your job is limited to deciding
23 whether the government has proved the crimes charged.

24 The defendant has been charged with several crimes.
25 The number of charges is no evidence of guilt, and this

1 should not influence your decision in any way. It is your
2 duty to separately consider the evidence that relates to each
3 charge and to return a separate verdict for each one.

4 For each charge, you must decide whether the
5 government has presented proof, beyond a reasonable doubt,
6 that the defendant is guilty of that particular charge. Your
7 decision on one charge, whether it is guilty or not guilty,
8 should not influence your decision on any of the other
9 charges.

10 Count 1 charges the defendant with being a
11 prohibited person in possession of a firearm and ammunition.
12 For you to find the defendant guilty of this crime, you must
13 find that the government has proved each and every one of the
14 following elements, beyond a reasonable doubt.

15 First, that the defendant has been convicted of a
16 crime punishable by imprisonment for more than one year. The
17 government and the defendant have agreed that the defendant
18 has previously been convicted of a crime punishable by
19 imprisonment for more than one year.

20 Second, that the defendant, following his
21 conviction, knowingly possessed a firearm or the ammunition
22 specified in the indictment.

23 Third, that at the time the defendant possessed the
24 firearm or ammunition, he knew that he had been convicted of
25 a crime punishable by imprisonment for more than one year.

1 The government and the defendant have agreed that the
2 defendant knew he had been convicted of a crime punishable by
3 imprisonment for more than one year.

4 Fourth, that the specified firearm or ammunition
5 crossed a state line prior to the alleged possession. It is
6 sufficient for this element to show that the firearm or the
7 ammunition was manufactured in a state other than Michigan.
8 The government and the defendant have agreed that the firearm
9 and ammunition crossed a state line prior to the alleged
10 possession.

11 Now, I will give you more detailed instructions on
12 some of these elements. First, the defendant does not have
13 to own the firearm or ammunition in order to possess them.
14 Next, I want to explain something about possession. The
15 government does not necessarily have to prove that the
16 defendant physically possessed the firearm or ammunition for
17 you to find him guilty of this crime.

18 The law recognizes two kinds of possession, actual
19 possession and constructive possession. Either one of these,
20 if proved by the government, is enough to convict. To
21 establish actual possession, the government must prove that
22 the defendant had direct physical control over an object or
23 substance, and knew that he had control of it. To establish
24 constructive possession, the government must prove that the
25 defendant had the right to exercise physical control over the

1 object or substance and knew that he had this right and that
2 he intended to exercise physical control over them at some
3 time either directly or through other persons.

4 For example, if you left something with a friend,
5 intending to come back later and pick it up, or intending to
6 send somebody else to pick it up for you, you would have
7 constructive possession of it while it was in the actual
8 possession of your friend. But understand that just being
9 present where something is located, does not equal
10 possession. The government must prove that the defendant had
11 constructive possession of the firearm or ammunition and knew
12 that he did, for you to find him guilty of this crime. This,
13 of course, is all for you to decide.

14 The term, "knowingly," means voluntarily and
15 intentionally and not because of mistake or accident. If you
16 are convinced that the government has proved all of these
17 elements, say so by returning a guilty verdict on this
18 charge. If you have a reasonable doubt about any one of
19 these elements, then you must find the defendant not guilty
20 of this charge.

21 Count 2 charges the defendant with possession of a
22 firearm with an obliterated serial number, in violation of
23 federal law. For you to find the defendant guilty of this
24 crime, you must be convinced that the government proved each
25 and every one of the following elements beyond a reasonable

1 doubt.

2 First, that the defendant knowingly possessed a
3 firearm. And, again, the term, "knowingly," means
4 voluntarily and intentionally, and not because of mistake or
5 accident.

6 Second, that the firearm had moved from one state
7 to another. The government and the defendant have agreed
8 that the firearm moved from one state to another.

9 Third, that the manufacturer's serial number of the
10 firearm had been removed, obliterated or altered.

11 Fourth, that the defendant knew that the serial
12 number had been removed, obliterated, or altered.

13 If you are convinced that the government has proved
14 all of these elements, say so by returning a guilty verdict
15 on this charge. If you have a reasonable doubt about any one
16 of these elements, then you must find the defendant not
17 guilty of this charge.

18 Count 3 charges the defendant with the crime of
19 possession with intent to distribute buprenorphine. Don't
20 hang on my pronunciation of this word. Give it to me one
21 more time, Mr. DePorre.

22 MR. DePORRE: Buprenorphine.

23 THE COURT: Buprenorphine. Buprenorphine is a
24 controlled substance. For you to find the defendant guilty
25 of this crime, you must find that the government has proved

1 each and every one of the following elements, beyond a
2 reasonable doubt.

3 First, that the defendant knowingly possessed
4 buprenorphine.

5 Second, that the defendant intended to distribute
6 buprenorphine.

7 Now I will give you more detailed instructions on
8 some of these terms. We have already discussed the meaning
9 of actual and constructive possession. Those same
10 instructions and definitions apply to this Count 3. Remember
11 that just being present where something is located does not
12 equal possession. The government must prove that the
13 defendant had possession of buprenorphine, and knew that he
14 did, for you to find him guilty of this crime. This, of
15 course, is all for you to decide.

16 To prove that the defendant knowingly possessed
17 buprenorphine, the defendant did not have to know that the
18 substance was buprenorphine. It is enough that the defendant
19 knew that it was some kind of controlled substance. Further,
20 the defendant did not have to know how much buprenorphine he
21 possessed. It is enough that the defendant knew he possessed
22 some quantity of buprenorphine.

23 The phrase, "intended to distribute," means the
24 defendant intended to deliver or transfer a controlled
25 substance sometime in the future. If you are convinced that

1 the government has proven all of these elements, say so by
2 returning a guilty verdict on this charge. If you have a
3 reasonable doubt about any one of these elements, then you
4 must find the defendant not guilty of this charge.

5 I want to say a word about the dates mentioned in
6 the indictment. The indictment charges that the crimes
7 happened on or about November 26th, 2020. The government
8 does not have to prove that the crimes happened on that exact
9 date, but the government must prove that the crimes happened
10 reasonably close to that date.

11 This concludes the part of my instructions
12 explaining the elements of the crime. Next, I will explain
13 some rules that you must use in considering some of the
14 testimony and evidence.

15 A defendant has an absolute right not to testify or
16 present evidence. The fact that the defendant did not
17 testify cannot be considered by you in any way. Do not even
18 discuss it your deliberation. Remember that it is up to the
19 government to prove the defendant guilty, beyond a reasonable
20 doubt. It is not up to the defendant to prove that he is
21 innocent.

22 You have heard the testimony of Dustin Hurt, who
23 testified as an opinion witness. You do not have to accept
24 Dustin Hurt's opinion. In deciding how much weight to give
25 it, you should consider the witness's qualifications and how

1 he reached his conclusions. Also consider the other factors
2 discussed in these instructions for weighing the credibility
3 of witnesses. Remember that you, alone, decide how much of a
4 witness's testimony to believe, and how much weight it
5 deserves.

6 You have heard that before this trial, the
7 defendant was convicted of crimes. These early convictions
8 were brought to your attention only as one way -- excuse me.
9 The point I want to make here is that the earlier convictions
10 are not evidence that the defendant, here, is guilty of the
11 crimes for which he's on trial now. Other than that, you can
12 disregard what you have written there on number 19.

13 During the trial, you may have seen counsel use a
14 timeline which was offered to assist in the presentation and
15 understanding of the evidence of evidence. It is my
16 understanding you may see this in closing argument. The
17 material on the timeline is not, itself, evidence and must
18 not be considered as proof of any facts.

19 You have heard evidence that the defendant,
20 Mr. Garza, made statements in which the government claims he
21 admitted certain facts. It is for you to decide whether the
22 defendant made the statements and if so, how much weight they
23 deserve. In making these decisions, you should consider all
24 of the evidence about the statements, including the
25 circumstances under which the defendant allegedly made them.

1 You may not convict the defendant solely upon his own
2 uncorroborated statement or admission.

3 The government and the defendant have agreed or
4 stipulated to certain facts, and therefore you must accept
5 the following stipulated facts as proved.

6 First, that the firearms and ammunition alleged in
7 the indictment were manufactured outside of the state of
8 Michigan and were moved from one state to another.

9 Second, that the defendant knew he had a prior
10 conviction for a crime punishable by imprisonment for a term
11 exceeding one year.

12 And third, that the buprenorphine alleged in the
13 indictment was, in fact, buprenorphine, a controlled
14 substance.

15 I want to make one other point that is not on here.
16 During the trial, you have heard reference to marijuana and
17 keif, and I want to make clear to you that Mr. Garza is not
18 on trial for any marijuana-related offenses or any
19 keif-related offenses of any kind.

20 Before we go to closing, let me see counsel at
21 sidebar for a second.

22 (Sidebar conference held on the record
23 at 10:54 a.m. as follows:

24 THE COURT: So I noticed as I was giving these
25 instructions, that one in the packet that I missed was this

1 reference to him being convicted of certain crimes, and they
2 were brought to the jury's attention to help them decide how
3 believable his testimony was. I didn't give that instruction
4 when I caught it. I said -- I mentioned only the last
5 sentence there, that the crimes aren't evidence that he's
6 guilty of the crimes he's on trial for now.

7 Do either of you think I need to do anything else
8 related to this point, Mr. DePorre?

9 MR. DePORRE: The government doesn't. We believe
10 it is clear.

11 MR. LONGSTREET: Nothing on behalf of the
12 defendant.

13 THE COURT: Okay. Thank you.

14 (Sidebar conference concluded at 10:55 a.m.)

15 THE COURT: All right. Ladies and gentlemen, I
16 have reached the end of the initial portion of my
17 instructions, and I'm going to turn it over to Mr. DePorre
18 now for the government's closing argument.

19 Mr. DePorre.

20 MR. DePORRE: Thank you, Your Honor.

21 THE COURT: Go ahead.

22 MR. DePORRE: Thank you. Good morning.

23 THE JURY: (Collectively) Good morning.

24 MR. DePORRE: This is my opportunity to talk about
25 the law and the facts. And before I get started going down

1 that road and talking about the law or the facts, there's one
2 key piece of evidence that I want to highlight.

3 Back during opening yesterday, I said that you
4 would hear the defendant's own words. The most compelling
5 evidence in this case is that the defendant told his
6 girlfriend that he could protect her. He told her that he
7 had a banger, that his mom had it in the car, and that the
8 Metro Police didn't find it.

9 Would you play Government's Exhibit 11B?

10 (Audio played for the jury.)

11 MR. DePORRE: The only reasonable explanation that
12 he would say this is that he believed it. He believed he had
13 pulled one over on the cops and that he had gotten away with
14 it.

15 Think back to your childhood. I think back to
16 mine. I think about my mother giving me the advice to don't
17 count your chickens before they are hatched. That's exactly
18 what Mr. Garza did, he counted his chickens. He thought he
19 had gotten away with it. He thought that Mom still had the
20 banger in the car that she had picked up from the impound
21 lot.

22 When this case started, during opening, I told you
23 that I would ask you to return a guilty verdict on all three
24 counts. You've heard now the Court provide you with the
25 primary instructions that you have to follow during your

1 deliberations.

2 And on page 4 of that instruction packet that's in
3 front of you, he read page 4, paragraph 4. He talked about
4 what it means to prove something beyond a reasonable doubt.
5 It is the government's burden, ladies and gentlemen, to prove
6 every element of the crime charged, beyond a reasonable
7 doubt. And then he defines reasonable doubt.

8 Proof beyond a reasonable doubt does not mean proof
9 beyond all possible doubt. Possible doubts or doubt based
10 purely on speculation are not reasonable doubts. A
11 reasonable doubt is a doubt based on reason and common sense.
12 It may arise from the evidence, the lack of evidence, or the
13 nature of the evidence.

14 Common sense. Common sense.

15 Now, the Court has provided you with the elements
16 of all the offenses, the three elements of the three counts,
17 and we're going to talk about each one of them and talk about
18 what it means to prove them beyond a reasonable doubt.

19 So let's look first at Count 1, possession of a
20 firearm by a prohibited person. The elements are listed
21 there on page 14 of the packet. They start at capital
22 letter A. The first element is that the defendant had been
23 convicted of a crime punishable by imprisonment for more than
24 one year. The parties agree.

25 Second, that the defendant, following his

1 conviction, knowingly possessed a firearm or the ammunition
2 specified in the indictment. We're going to come back to
3 that.

4 Third, that at the time the defendant possessed the
5 firearm, he knew the -- he knew he had been convicted of a
6 crime punishable by imprisonment for more than one year.
7 Again, check it off, the parties agree.

8 And then fourth, that the specified firearm crossed
9 state line prior to the alleged possession. The parties
10 agree, you can check that off.

11 So Count 1 comes down to whether or not the
12 defendant knowingly possessed the firearm and the ammunition.
13 And remember during opening, I talked about two key questions
14 to pay attention to during -- throughout this trial. I said
15 the first one was whether Garza knowingly possessed a firearm
16 and ammunition.

17 Now, you've heard the instructions about actual
18 possession and about constructive possession. I like to use
19 an analogy. I currently am possessing this pen. Is this my
20 pen? It is in my possession. I also have a pen -- well,
21 there is one in my bag, there is one right here, this pen
22 right here. I possess that pen. This pen that I'm holding,
23 this is actual possession. That pen over there is
24 constructive possession. And you know what, I probably have
25 a pen back in my office. In fact, I know I do, it is sitting

1 in a coffee cup on my desk. I possess that pen, too. That's
2 my pen.

3 All of those are forms of possession. We don't
4 have to prove that the defendant had the gun in his hand. We
5 are telling you it was in the engine compartment, but that's
6 where he possessed it.

7 Let's talk about the second count, because really,
8 the second count and the first count, they kind of come down
9 and boil down to the same issue.

10 The elements of the second count are listed on
11 page 16 of your packet. The first element is that the
12 defendant knowingly possessed a firearm. Well, that's what
13 we have to figure out.

14 Second, that the firearm has moved from one state
15 to another. Again, the parties agree, check it off.

16 Third, that the manufacturer's serial number of the
17 firearm had been removed, obliterated or altered.

18 And fourth, that the defendant knew the serial
19 number had been removed, obliterated or altered.

20 The parties don't agree on those.

21 Would you pull up Government's Exhibit 5E?

22 So you're going to have to decide whether or not
23 this firearm had an obliterated serial number, whether that
24 serial number was -- I want to get this wording
25 right -- removed, obliterated or altered. And you are going

1 to have to decide whether anyone who would have possessed
2 this gun would have known that the firearm (sic) was removed,
3 obliterated or altered.

4 I'm going to ask Mr. Orvis to stand up and
5 demonstrate for you or show you Government Exhibit 5F. Why
6 don't you start down here, with juror number 1, and we go all
7 the way to juror number 14.

8 So really the crux of this case is about
9 possession. It's about whether the defendant knowingly
10 possessed firearm and ammunition.

11 Would you pull up the timeline?

12 Now, this next exhibit, as the Court instructed, it
13 is not an exhibit, it is an aid -- a visual aid, and it is a
14 timeline of the conduct in this case.

15 So here, first we have November 26th, 2020, that's
16 the day the police arrest Mr. Garza in the Meijer parking
17 lot. That's the day they do an inventory search of the car,
18 and they find a nine-millimeter bullet and they find two
19 strips of Suboxone underneath the driver seat. It wasn't
20 a .380-caliber bullet they found; it was a nine-millimeter
21 bullet.

22 That's also the day they search Mr. Garza's pocket
23 and find Suboxone in his pocket. We are not really focused
24 on that now; we're going move to Count 3 in a minute. But
25 the ammunition is important. It's the day Mr. Hutchins

1 says -- you can take Mr. Hutchins -- you assess his
2 credibility, but in the parking lot, he tells the officer,
3 hey, there's a gun in the car and the officer looks, and then
4 he interviews, and then he looks again. And that's the day,
5 on Thanksgiving, that he finds the gun in the engine
6 compartment, in a black mesh bag underneath the battery. It
7 is also the day that Mr. Hutchins is
8 interviewed -- Mr. Hutchins and Mr. Garza.

9 So Garza's interview, you've seen clips of it, it
10 is recorded. You have seen him talk about my car, my title,
11 my belongings, all my stuff was in that car, my weight vest,
12 my butane, my marijuana, which again, that's -- who cares
13 about marijuana, right? That's not what we're talking about
14 today. We're talking about things that Mr. Garza owns that
15 are in my car. Reggie doesn't give him a ride to Meijer, he
16 gives Reggie a ride to Meijer.

17 We don't know when -- we know that from Mr. -- the
18 testimony earlier this morning, that Mr. Parkes sold that car
19 to Reggie Allen back in November -- or around November
20 of 2019. We don't know what happened with who owned it or
21 anything like that. We know that when the police impounded
22 the car, the registered owner was Mr. Parkes. We don't know
23 the rest, it's not in evidence.

24 That Thanksgiving, he tells Officer Fisher how he
25 bought the car. He got some unemployment payments, his

1 ex-girlfriend helped him with it, and that's how he got the
2 money to buy my car.

3 Now, let's talk a little bit about Mr. Hutchins.
4 He came in here wearing a jail uniform -- jail garb, and he
5 is pending sentencing right now, for a carjacking. As
6 prosecutors, we have an expression, we say to juries like you
7 that we wish we could call priests and rabbis in cases, but
8 that's not who our witnesses are. The reference is to people
9 that haven't committed crimes, that have had -- that aren't
10 going to show up wearing a prison jumpsuit or jail jumpsuit.
11 That's not whom -- that's not who Mr. Hutchins is. It is on
12 you to decide, you know, what -- what credibility you want to
13 give his testimony.

14 But there are some things that are kind of
15 corroborated. He says he was on Clancy that morning. He
16 says he saw a gun. He said he didn't remember if it was
17 a .380 or a nine, but it looked like the gun we showed you in
18 the picture.

19 Could you pull up Government Exhibit 5C?

20 It was black, semiautomatic pistol he said. Looked
21 like this one, with the extended magazine.

22 He also talked about a whip. He said that that's a
23 slang reference to a car. Now, some people know that, some
24 people don't. But you heard it from Mr. Hutchins, take it
25 for what it's worth.

1 Could you go back to the timeline?

2 Now, this is a broad timeline, but there's a lot of
3 stuff going on the 26th of 2020 of November. There's a lot
4 of stuff. You could have a timeline, in your own mind, at
5 least of the things that happened that day. Meet up at
6 Clancy. Drive to Meijer. Get arrested. Search of
7 Mr. Garza's person. Search of the vehicle. Interview with
8 Mr. Garza. Search of the vehicle again.

9 Remember that second search, that's the one where
10 they find the gun. You heard testimony about where Mr. Garza
11 was for the first search; he was in the Meijer parking lot.
12 He didn't see him find a gun. Now, Officer Fisher found a
13 bullet and he had information from Robert Hutchins that there
14 was gun in the car, so he tried a ruse, he tried a bluff. He
15 asked, whose gun did I find? And today, you heard his
16 answer. It wasn't my gun, but I didn't see Reg or them get
17 in my car with no gun.

18 Can you play that exhibit again? I think it is
19 either 15C or D.

20 (Video played for the jury.)

21 MR. DePORRE: Nope, not that one. Sorry.

22 (Video played for the jury.)

23 MR. DePORRE: I was looking at them when they got
24 in my car. He wasn't looking at them when they got in his
25 own car. The ruse doesn't work, he admits it.

1 Officer Fisher moves on. He starts showing pictures of
2 things he did find in the car; he shows him a picture of a
3 bullet and some other stuff that he found. Mr. Garza goes
4 off to jail. And then in that timeline in your mind, is that
5 second inventory search in the impound lot, and that's when
6 they find the gun.

7 Now, would you pull the timeline up again?

8 That sums up November 26th. There's a lot, but
9 that kind of sums it up.

10 We move on to December 10th, that's the day that
11 Mr. Garza's mother, Dominga Flanagan. Remember you saw the
12 birth certificate; you saw the marriage license. You saw
13 Brett -- excuse me, Detective Orvis' or Sergeant Orvis'
14 testimony that he turned over property to Mr. Garza's mother,
15 Dominga Flanagan. That's the day Ms. Flanagan picks up the
16 car. The vehicle is released. The vehicle release is signed
17 to her.

18 Could you pull up Government's Exhibit 7?

19 There it is, at the bottom.

20 Would you zoom in on the bottom-half where it says,
21 released to Dominga Flanagan with notarized letter.

22 There is a notarized letter that she presents. And
23 you heard the testimony, she has to present a copy of the
24 title or title and a notarized letter. We don't know where
25 she got the title from. Did she go back in the car? Did the

1 police give it to her? That's not in evidence. We don't
2 know. But you heard the testimony that that's what's
3 required. She presents a notarized letter and the title.

4 And then the jail call.

5 Go back to the timeline, please.

6 December 16, 2020. You have heard clips from the
7 jail call. We started with the first clip that you heard,
8 where he references it twice.

9 Would you play Government Exhibit 11C?

10 He says, my mom got my whip. We know what whip
11 means, car. My mom got some money that's owed me. My mom
12 got one of my bangers, the one with the stick in it. And we
13 know from Special Agent Hurt, the ATF guy, the guy familiar
14 with firearm terms, the guy that knows the precise
15 measurement of a .380-caliber bullet and a 9 nine-millimeter
16 bullet.

17 Could you play 11C?

18 (Audio played for the jury.)

19 MR. DePORRE: Would you go back to the timeline.
20 We're asking a lot of technology, but we have a phenomenal
21 assistant here. Thank you.

22 That's -- excuse me. That's December 16th, 2020,
23 and then you've heard testimony that Mr. Garza isn't charged
24 with the gun until June 11th, 2021. You heard Officer Fisher
25 testify he never went back after he found the gun and

1 interview Mr. Garza, he didn't tell him, hey, I did find that
2 gun. So what did Mr. Garza believe when he made that jail
3 call to Madison Merrill?

4 Now, defense has had some themes throughout the
5 trial, and he's going to have an opportunity to speak to you.
6 And one of things I want to caution you against is, don't
7 look at each particular piece of evidence in isolation. Look
8 at all the evidence that has been presented at trial and make
9 your determination based on that.

10 One of the themes the defense has raised is, well,
11 that call, that's tough talk. That's braggadocios. If you
12 get me out, I've got my banger with my stick, I can protect
13 you. He's trying to convince his girlfriend to pony up
14 the 500 bucks to get him out of jail. Ask yourself if that
15 fits with all the other evidence, or if the context of the
16 call fits with the evidence that, no, that's his banger,
17 that's one with the stick in it, in his mom's car, that's
18 his.

19 Another theme that kind of arose was Officer
20 Fisher, he was sloppy that first time he looked in the car.
21 He missed the mesh bag right under the battery. Well, does
22 that mean that Mr. Garza didn't possess it? I mean, maybe he
23 should have been more thorough with the search. Maybe he did
24 exactly what the protocol is, but it doesn't matter, it
25 doesn't matter. That doesn't impact whether or not he

1 possessed the firearm.

2 Another topic that has been raised; banger could
3 mean something else. Banger could mean a syringe that he was
4 talking about. Well, he says banger, twice. You
5 heard -- you heard Hutchins say banger is a term for gun.
6 You heard from the Special Agent who's talked to multiple
7 people in Flint about guns and firearms, he told you what
8 banger means. And you have the context of the call.

9 Here is another theme, the ruse, Fisher's ruse.
10 Well, why would he say he had a banger in the car if he had
11 heard already from Officer Fisher that they had found the
12 banger, they had found the gun? It must not mean gun. Well,
13 Garza didn't watch the second search. He was present for the
14 first one, and he didn't see a photo of the gun when
15 Officer Fisher showed him things on his phone, the things he
16 had seized from the car, and he wasn't charged with the gun
17 until June 11th, 2011 (sic).

18 I'm asking you to not take apart every piece of
19 evidence and view it as a discrete independent thing. I'm
20 asking to you look at all the evidence. You can pick apart,
21 you know, one particular thing. Maybe it would make sense --
22 tough talk might make sense, if his mom didn't pick up the
23 car. If it wasn't the Metro Police that searched it. So
24 look at things in the context of the evidence that's before
25 you.

1 Now, we have talked a lot about Counts 1 and 2, and
2 I need to spend some time on Count 3. Let's discuss Count 3,
3 which charges possession with intent to distribute
4 buprenorphine. It just kind of rolls off the tongue,
5 buprenorphine.

6 The first element -- and these are on page 17. I'm
7 going to say, buprenorphine, a few more times. The first
8 element is the defendant knowingly possessed buprenorphine.
9 Second, that the defendant intended to distribute
10 buprenorphine. And then down below that, there is a
11 discussion about what it means to prove that he knowingly
12 presented it -- or knowingly possessed it. This is on B on
13 that page, right, sort of down here. He had to know it was a
14 controlled substance.

15 And would you pull up Government exhibit 1 -- I
16 guess it is 1B?

17 He knew it was buprenorphine if he knew it was a
18 controlled substance that says -- that's knowingly possessed
19 it.

20 Would you scroll in -- can you zoom in on the tab?
21 Maybe get a big box there.

22 Well, it says it right on there, buprenorphine and
23 naloxone. And then it says here, RX only, prescription only.

24 So this one kind of boils down to that same issue,
25 which is the issue of whether he -- and this is what we

1 raised at opening, did he intend to distribute Suboxone? We
2 stipulated that the Suboxone packs contain buprenorphine.
3 Did he intend to distribute it?

4 And, again, on your instructions -- you can keep
5 going back to these, because they have some helpful
6 definitions. What the intent to distribute means is written
7 there in C; whether or not the defendant intended to deliver
8 or transfer a controlled substance sometime in the future.
9 The defendant said exactly what he planned to do with the 19
10 doses of buprenorphine. He told Officer Fisher. He claimed
11 he took Suboxone. He claimed he lied to his doctor and said
12 that he needed two doses per day, but in reality, he only
13 needed one, that two doses would make him sick, but he got
14 two and he sold the rest for extra money.

15 Would you play the clip 4C?

16 (Audio played for the jury.)

17 MR. DePORRE: Now, just a brief disclaimer. You've
18 heard this disclaimer throughout, but this case isn't about
19 marijuana, it's about buprenorphine.

20 Listen to what he says there. In his own words he
21 intends to distribute some of the buprenorphine, maybe not
22 all of it, but he's going to take some, he's going to get rid
23 of some. He's got 19 tabs, total; 17 in his right-front
24 pants pocket and two under the seat -- under the driver's
25 seat where he's sitting in his car, the car that he says is

1 his car, and where the nine-millimeter bullet is. He wants
2 extra money, that's what he says. He's selling them for
3 extra money.

4 Well, he's got some money, he has \$810 in cash in
5 his pocket. Remember, we heard from Officer Fisher about the
6 denominations, it wasn't all \$100 bills. There weren't
7 any \$100 bills. There was a 50, mostly 20s and some other
8 denominations.

9 Ladies and gentlemen, Noe Garza is in business.
10 He's walking around, he's got a cash register in his left
11 pocket, and he's got his inventory in his right, and he's got
12 two more tabs that fell out underneath the seat of the
13 driver's car.

14 Let's talk about some points raised by the defense.
15 It doesn't matter how addictive Suboxone is. It doesn't
16 matter whether or not you can overdose. Those aren't things
17 that are elements that need to be proved by the government.
18 So you've heard some evidence that Suboxone, when prescribed
19 by a licensed provider, is used to treat opioids -- people
20 that are opioid dependent, people that have addiction, and
21 that it also can be used for pain management.

22 But you also heard testimony that Noe Garza doesn't
23 have a prescription for Suboxone.

24 Would you pull up Government Exhibit 8?

25 This is Noe Garza's MAPS report. It shows his

1 prescriptions. He doesn't have a prescription for
2 buprenorphine.

3 Would you scroll through to the next page?

4 Now, the defense also talked about free samples.
5 But Ms. Cortes testified, the MAPS witness, the person who
6 came down here from Lansing to talk about what MAPS is and
7 tell us about that exhibit. You will have to rely on your
8 memory, but she talked about who is required to enter a
9 prescription into MAPS, and her testimony was that the
10 dispensing provider has an obligation to enter it into MAPS.
11 The dispensing provider, doesn't matter if it's a doctor or
12 doesn't matter if it's a pharmacy, whoever dispenses the
13 controlled substances, has to enter it.

14 Guess what? It doesn't really matter where he got
15 it. It doesn't matter where he got it. What matters is.
16 Did he intend to distribute it? So, you know, if the claim
17 is that these are free samples and he's -- he got lucky,
18 because he got a stack of 19 free samples and he's passing
19 them out to other friends. Well, ladies and gentlemen, that
20 meets the elements, that meets the elements of this crime.
21 You can decide whether or not the evidence shows that those
22 are free samples, but the evidence here is that those strips,
23 those tabs that are Government Exhibit 1B, those are
24 buprenorphine, and the defendant said he's selling them for
25 extra money.

1 Go to 1B. All right. Thank you. You can take it
2 down.

3 So we are left with three crimes, all with their
4 own independent elements that you have before you on the
5 piece of paper. And what's critical is just the two
6 questions: Did Mr. Garza knowingly possess a firearm? And
7 did he intend to distribute Suboxone?

8 Now, Mr. Longstreet is going to stand up and give a
9 concluding statement or a closing argument for Mr. Garza, and
10 then I'm going to speak again, and then you're going to have
11 an opportunity to deliberate. When you do that, don't rush.
12 Think about all the evidence in the case, think about all the
13 exhibits that have been presented. If you need to see an
14 exhibit, you can ask, you can do that. Only the exhibits
15 that have been introduced at trial you can't -- it might be
16 nice to hear other things, but really what's going to be
17 subject to your deliberations is the evidence that was
18 presented at trial. And then you will have an opportunity to
19 discuss the case with one another.

20 Most importantly, the government is asking you to
21 use your common sense. Remember that reasonable doubt -- if
22 it is a reasonable doubt, it has to be based on reason and
23 common sense. The standard here is not all possible doubt.
24 Use your common sense and return a verdict of guilty on the
25 three counts.

1 Thank you.

2 THE COURT: Thank you, Mr. DePorre.

3 Mr. Longstreet.

4 MR. LONGSTREET: Thank you.

5 Again, good morning, ladies and gentlemen of the
6 jury.

7 THE JURY: (Collectively) Good morning.

8 MR. LONGSTREET: This is the defense closing
9 statement. This is an attempt for us to summarize all the
10 evidence that you have heard over the last two days. This is
11 not, again, an attempt for us to pull the wool over your eyes
12 or misconstrue a fact. But the responsibility of a defense
13 attorney is to review the evidence presented by the
14 government critically, to show you that the prosecution has
15 not met their burden of proof beyond a reasonable doubt.

16 We held the prosecution or the government to a
17 standard, a very high standard, of proof beyond a reasonable
18 doubt. And over the last two days, you have had every reason
19 to doubt all of the evidence in the government's case.

20 First, I would like to talk to you about what the
21 standard is. A reasonable doubt is a doubt that arises from
22 the evidence, meaning what the prosecution has shown you, and
23 it also arises from the lack of evidence, what the
24 prosecution has not shown you. And over the last two days,
25 the prosecution has failed in every attempt to show that my

1 client was in constructive possession of a firearm and also
2 that he possessed with the intent to deliver Suboxone.

3 Now, the standard that the prosecution must show is
4 that the evidence proves to you, or the evidence is so
5 convincing that you would not hesitate to rely on it in
6 making decisions in your own lives. The question becomes,
7 would you bank your life on this evidence? And we would
8 submit to you that you would not. If the evidence does not
9 convince you beyond a reasonable doubt, then you should say
10 so by voting not guilty on all counts.

11 Now, what, exactly, was the evidence that we needed
12 to look at? The first question becomes constructive
13 possession. Did Mr. Garza have a right to have physical
14 control over the firearm? Did he know he had the right to
15 exercise physical control over the firearm? And did he
16 intend to exercise physical control over that firearm?

17 Now, the prosecution has presented to you multiple
18 witnesses in this case, and they have presented to you
19 evidence in this case. And the first and most critical piece
20 of evidence that they try to present to you is a phone call
21 by Mr. Garza. First, they tell you that on
22 November 26th, 2020, my client -- asked my client -- or he
23 bluffed Mr. Garza, we found the gun. Whose gun is it? My
24 client doesn't know, and to this day, he still doesn't know.
25 And the government hasn't shown you that he knew the firearm

1 was under the hood of that car.

2 Secondly, they want to tell you that on
3 December 16th, 2020, that Mr. Garza made this grand admission
4 that that burner -- that banger is mine. I still got the
5 stick. Well, on November 26th, he's told they found a gun.
6 But the government wants you to believe that 20 days later
7 he's telling his girlfriend that they didn't find a gun that
8 he knew they found. Would you bank your life on that? Are
9 you so convinced that you would make a decision in your
10 everyday life on conflicting evidence? The government is
11 trying to piece what they want you to believe it is, versus
12 what it actually is. Let's not be confused about what this
13 really is.

14 They want you to believe that he meant, when he
15 said banger, he was talking about gun. Well, I find that
16 kind of strange and this is the reason why. Well, if he
17 meant to say gun, he would have just said gun, like he did
18 during his conversation with his girlfriend. Now, the
19 government didn't want to play that particular piece of phone
20 call to you, because it doesn't fit in their grand scheme of
21 what they believe this evidence is, so they didn't play the
22 portion of a phone call where my client says gun and meant
23 gun.

24 So they bring you an ATF agent who tells you what
25 banger means, but here's the problem, banger has got a lot of

1 meanings. This one particular person tells you it is a gun,
2 when he's talking about somebody else's gun. We heard in the
3 phone call him say they can't put a green light on me, they
4 ain't got no gun to put a green light on me.

5 The officer -- the ATF agent says to you, well,
6 when he says gun that time, he's talking about somebody
7 else's gun. Okay. Well, banger means gun, right? Well,
8 only when he's talking about -- when he's talking about his
9 gun is it a banger? But then he tells you banging on them
10 means he's punching. So in order to bang on someone, don't
11 you have to have a banger, which would be your hands?

12 Ladies and gentlemen, like the weapon of mass
13 destruction, don't get confused what this is about. This is
14 the government piecing what they want you to think this stuff
15 means versus what it actually is. It doesn't make sense for
16 a man to know they found a gun and then two days
17 later -- then 20 days later, tell his girlfriend they didn't
18 find a gun that he knew they found. Was he talking about
19 that gun? The problem is that question sits out there that
20 the government has not answered, and it is not your job to do
21 so. It is for them to answer that question. And if the
22 answer is -- if the question is unanswered, the verdict is
23 not guilty.

24 Moving on, the prosecution wants you to believe
25 that my client constructively possessed the firearm under the

1 hood of the car. First, it's not in the driver seat. It's
2 not on his person. They didn't do any fingerprint testing.
3 They didn't do any DNA tests. I'm going to let you know why
4 that is important in a second.

5 But the gun is found away from him, we know that.
6 There is no evidence, and they called a person to the stand,
7 a co-defendant, to tell you that my client possessed the gun,
8 but guess what that person didn't say? What happened to the
9 gun after they left the house? This firearm that he
10 allegedly saw my client with after they left the house, he
11 didn't know what happened to it. And you didn't hear him say
12 that my client put their firearm underneath the hood of the
13 car. So who put it there?

14 Guess what, ladies and gentlemen, it's not for you
15 to figure out. It's for them to show you, and they didn't.
16 That's why DNA and fingerprinting is important. You don't
17 get to give the government credit for not doing the work.
18 You don't get to give the government credit for not doing the
19 work.

20 We know this vehicle was owned and occupied by
21 three people. Blake Austin Parkes, and Mr. Parkes has
22 nothing to do with this case other than he sold the car. You
23 have Meldrum Allen, an accused thief, heroin addict, who is
24 in the store stealing, who Mr. Blake Austin (sic) told you he
25 sold the car to. You have the other co-defendant,

1 Mr. Hutchins, telling you that Mr. Allen was driving that car
2 around. And then you've got Mr. Garza, who drove the car.
3 The question is, out of those three people, who put the gun
4 underneath the hood of the car? The only person who really
5 had all the great details about it was the carjacker.

6 It's not enough for the government to show you that
7 my client had a gun. They have to show you he possessed this
8 gun. If he meant banger and stick, and stick and banger
9 meant firearm with extended clip, guess what, that's not an
10 extended clip, that's an eight-shot magazine.

11 Mr. Hutchins told you that a stick was a 30-round
12 clip. He gave a description to the police that it was a .380
13 with a 14-round clip. But guess what? Neither one of those
14 is this gun.

15 The government has to show you that my client
16 constructively possessed this firearm. This firearm they
17 failed to fingerprint, latent fingerprint, to determine who
18 had the gun in their hand. No latent fingerprint testing on
19 the bullets to see who had the bullets in their hands. No
20 DNA testing on the firearm to see who held the firearm. This
21 is not for us to do. We don't have a burden of proof. It's
22 for the government to show you that my client constructively
23 possessed it.

24 Now, you could believe the word of the carjacker,
25 or they can actually get down to some science and do the real

1 job and identify who had the firearm. But they didn't do it,
2 and because they didn't do it, it's not guilty.

3 Now, they bring in Mr. Hutchins. This young man
4 was caught red-handed, stealing at Meijer. The subject of
5 Fisher's investigation was him, Hutchins, who gets in the
6 back seat of the car. Ladies and gentlemen, this is
7 critical, he's left in the car by himself when the police get
8 my client, Mr. Garza, out of the car.

9 Now, if you a gun-wheeling carjacker -- ain't my
10 gun. The nine-millimeter bullet that ties -- supposed to tie
11 my client to the gun is with this guy in the back seat. Now,
12 are you going put it past this carjacker got a bullet and a
13 gun. No. It's actually quite reasonable. The guy who
14 visits you gets charged with carjacking, what does a gun have
15 to do with it? Or may possess a firearm. But you don't have
16 any bullets in this young man's pockets, in the front seat of
17 the car, and they want you to say, oh, well, the stuff fell
18 out of the pockets and stuff landed on the side of the car.

19 How many of you guys have kids and you find French
20 fries, pennies, potato chips, GI Joe, all under your seat.
21 You don't know how they got there. You didn't do it. It
22 came out of the back seat. So is it reasonable that the
23 carjacking -- oh, the police on the way, get rid of this, not
24 my gun. Then what does he do? Gets pulled out of the car
25 red-handed, it's him, it's him, it's him. And what did the

1 police do? They wanted to get done and go home.

2 So the United States government is asking you to
3 convict him on this guy's word. Is this evidence that you
4 would bank your life on it? Would you use this to make
5 everyday decisions in your life? The word of a lying,
6 stealing carjacker, who's got every reason in the world to
7 lie, and got what he wanted, to get him in trouble, and to go
8 home.

9 Now, the drug dealing piece, and this is actually
10 the worst piece of the case. Just a little bit about myself.
11 I grew up on the west side of Detroit, and after I got
12 married, I moved home, across the street from my parents.
13 And unfortunately, I lived next to a crack house two doors
14 over, and I saw the heroin addicts running in and out of the
15 house. I wish I had a drug dealer like Noe Garza. Hey, man,
16 I got the Suboxone to get you off the heroin. I got the
17 Suboxone.

18 Ask yourself, ladies and gentlemen, is it
19 reasonable for a drug dealer to possess items that he's going
20 to sell that are going help his customers get off of the
21 product he sells? Is a drug dealer going to walk around
22 selling a drug that helps his customer get off the drug he
23 sells? Are you going to bank on that? Does that make sense
24 to you? There's no evidence that he was intending to
25 distribute. There's no evidence that he even knew -- can you

1 pronounce that for me, sir.

2 MR. DePORRE: Buprenorphine.

3 MR. LONGSTREET: Buprenorphine. How does he even
4 know this young man knows that buprenorphine is in this
5 stuff, and he's using it to keep himself from getting dope
6 sick. We know Suboxone is a drug that helps users of heroin.
7 So you mean to tell me, we got this grand drug dealer going
8 around helping his customers? A drug that really don't get
9 you high. A drug that really can't -- yes, it makes a
10 difference whether it makes you high or not, because people
11 sell drugs to people so they could get high. And if you are
12 not getting high off of it, why would you be thinking he's
13 selling it for that purpose. Does this make sense to you?

14 There is no other evidence to suggest that my
15 client was a drug dealer because he possessed a drug that
16 helped him get off of the drug that he was addicted to,
17 heroin.

18 Officer Fisher told you my client said, hey, man,
19 I'm getting dope sick. I get sick. He got it for his own
20 use. Now, how he got it? I don't know. But the question
21 is, did he possess it with the sole purposes of going to make
22 some money off of it or deal it like a drug dealer? The
23 answer to that question, to us, is no.

24 Over the last two days, the government has
25 attempted to bring to you evidence they believe would show

1 that my client was a felon in possession of a firearm. He
2 was in possession of a firearm with an obliterated serial
3 number. And he -- we admit he had Suboxone, but it's
4 possession of Suboxone, not possession with intent to deliver
5 Suboxone or buprenorphine. The issue is whether he intended
6 to deliver buprenorphine, and Suboxone isn't all
7 buprenorphine, it's a mixture of drugs. So could he have
8 truly intended to deliver one drug, when that particular drug
9 had more than one drug in it? Again, does that make sense to
10 you.

11 This is the last opportunities you're going to have
12 to speak to me. The government is going to stand up and they
13 are going to challenge just about everything I said. But the
14 fact will remain that what I said stays true. It is not an
15 attempt to pull wool over your eyes, but simply view the
16 evidence critically, to hold the prosecution to a burden of
17 proof. And if they have not met that burden of proof, if
18 they have not convinced you, your vote should be not guilty.
19 We are asking each and every one of you for that vote,
20 because this evidence does not convince you beyond a
21 reasonable doubt that my client is guilty of any crimes in
22 this case. You would hesitate to rely on it. You would
23 hesitate to make the most important decisions of your life
24 based on the evidence presented by the government, and
25 because of that, we're asking you for the right verdict, the

1 just verdict, the proper verdict, not guilty all counts.

2 Thank you.

3 THE COURT: Thank you, Mr. Longstreet.

4 Mr. DePorre, rebuttal for the government?

5 MR. DePORRE: I'm not going to disagree with all
6 the things he said. I'm going to take issue with some of
7 them.

8 First, I'm not asking to you rely on Mr. Hutchins.
9 I'm telling you, give his testimony the weight you think it
10 deserves, in light of your observations of Mr. Hutchins, and
11 all the other testimony in this case.

12 Mr. Longstreet has done a remarkable job of looking
13 at discrete issues and picking them apart. He looks at the
14 call. Mr. Garza, in the call, uses the word, "gun," to
15 describe other gang members who put a green light out on
16 them. They don't have a gun. He uses the word gun. And
17 when he speaks with his girlfriend, he uses the word,
18 "banger." It's not that he's trying to hide the words. We
19 are not saying that -- we are not saying that he's speaking
20 in some complex code. It is just obvious to Mr. Garza what a
21 banger is, it is obvious to the person listening on the other
22 side of the call what a banger is. He could have said gun.
23 We are not saying that was sort of cunning word usage by
24 Mr. Garza to disguise what he had in the car. He's bragging.
25 You know who he is? He's the guy that catches the touchdown

1 pass, he's running to the end zone, and he spikes the
2 football, but he's not in the end zone yet. He's not in the
3 end zone yet. They did find the gun. He's not afraid to say
4 gun, he just says banger because he knows what that means
5 and, evidently, the person who is listening to it knows what
6 it means.

7 Now, he also talked about three people who owned
8 the car. Ask yourself who put the gun under the hood?
9 That's the question. Who put the gun under the hood?
10 Blake Parkes said it wasn't him. He has never owned a
11 pistol. He sold the car in 2019.

12 So you are left with Meldrum Allen, who looks,
13 frankly, like a drug addict in the photo, and we've heard
14 testimony that he did use drugs. And you are left with
15 Noe Garza. It wasn't Reggie's car anymore, Noe made that
16 clear, he had the money, he came up with the money to buy
17 that car, it's his car, he saw Reggie get in the car, he
18 didn't have a gun. He's the one in the driver's seat. He's
19 the one who uses mesh bags to make keif.

20 We are not asking you to rely on any particular
21 fact in this case. Is it plausible that banger means
22 something in different contexts when he's talking about
23 banging on people? Absolutely. He's talking about fighting.
24 What we want you to do is look at all the evidence, view it
25 as a whole, and make a decision, and we are confident that

1 when you do that, you will find him guilty.

2 Thank you.

3 THE COURT: Thank you, Mr. DePorre.

4 Ladies and gentlemen, I'm going wrap up my final
5 instructions to you.

6 I earlier concluded the part of my instructions
7 explaining the rules for considering some of the testimony
8 and evidence. Now let me finish up by explaining some things
9 about your deliberations in the jury room and your possible
10 verdicts.

11 The first thing that you should do in the jury room
12 is choose somebody to be your foreperson. This person will
13 help guide your discussions and will speak for you here in
14 court.

15 Once you start deliberating, do not talk to the
16 jury officer or to me or to anyone else, except each other,
17 about the case. If you have any questions or messages, you
18 must write them down on a piece of paper, sign them, and then
19 give them to the jury officer. The officer will give them to
20 me, and I will respond as soon as I can. I may have to talk
21 to the lawyers about what you have asked, so it may take me
22 some time to get back to you. Any questions or messages
23 normally should be sent to me through your foreperson.

24 If you want to see any of the exhibits that were
25 admitted into evidence, you may send me a message and those

1 exhibits will be provided to you. One more thing about
2 messages, do not ever write down or tell anyone how you stand
3 on your votes. For example, to not write down or tell anyone
4 that you are split six/six or eight/four or whatever your
5 vote happens to be. That should stay secret until you are
6 finished.

7 Remember that you must make your decision based
8 only on the evidence that you saw and heard here in court.
9 During your deliberations, you must not communicate with or
10 provide any information to anyone, by any means, about this
11 case. You may not use any electronic device or media or
12 application unless specifically instructed to do so by this
13 Court, such as a telephone, cellphone, smart phone, iPhone,
14 Blackberry or computer, the Internet, any Internet service or
15 any text or instant messaging service, any Internet chat
16 room, blog or website, such as Facebook, MySpace, LinkedIn,
17 YouTube, Twitter, Instagram, WhatsApp, Snapchat or other
18 similar electronic service to communicate to anyone any
19 information about this case or to conduct any research about
20 this case until I accept your verdict. In other words, you
21 cannot talk to anyone on the phone, correspond with anyone,
22 or electronically communicate with anyone about this case.
23 You can only discuss the case in the jury room with your
24 fellow jurors during deliberations.

25 I expect you will inform me as soon as you become

1 aware of another juror's violation of these instructions.

2 You may not use these electronic means to
3 investigate or communicate about the case, because it is
4 important that you decide this case based solely on the
5 evidence presented in this courtroom. Information on the
6 Internet or available through social media might be wrong,
7 incomplete or inaccurate. Even using your smart phones,
8 tablets and computers and the news and social media apps on
9 those devices, may inadvertently expose you to certain
10 notices, such as pop-ups or advertisements that could
11 influence your consideration of the matters you've heard
12 about in this courtroom.

13 You are only permitted to discuss the case with
14 your fellow jurors during deliberations, because they have
15 seen and heard the same evidence you have. In our judicial
16 system, it is important that you are not influenced by
17 anything or anyone outside of this courtroom. Otherwise,
18 your decision may be based on information known only by you
19 and not your fellow jurors or the parties in the case. This
20 would unfairly and adversely impact the judicial process.

21 A juror who violates these restrictions jeopardizes
22 the fairness of these proceedings, and a mistrial could
23 result, which would require the entire process to start over.

24 Your verdict, whether it is guilty or not guilty,
25 must be unanimous. To find the defendant guilty of a

1 particular count, every one of you must agree that the
2 government has overcome the presumption of innocence with
3 evidence that proves the defendant's guilt beyond a
4 reasonable doubt. To find him not guilty of a particular
5 count, every one of you must agree that the government has
6 failed to convince you beyond a reasonable doubt. Either
7 way, guilty or not guilty, your verdict must be unanimous.

8 Now that all the evidence is in and the arguments
9 are completed, you are free to talk about the case in the
10 jury room. In fact, it is your duty to talk with each other
11 about the evidence and to make every reasonable effort you
12 can to reach unanimous agreement. Talk with each other.
13 Listen carefully and respectfully to each other's views.
14 Keep an open mind as you listen to what your fellow jurors
15 have to say. Try your best to work out your differences. Do
16 not hesitate to change your mind if you are convinced that
17 other jurors are right and that your original position was
18 wrong. But do not ever change your mind just because other
19 jurors see things differently or just to get the case over
20 with.

21 In the end, your vote must be exactly that, your
22 own vote. It is important for you to reach unanimous
23 agreement, but only if you can do so honestly and in good
24 conscience.

25 No one will be allowed to hear your discussions in

1 the jury room, and no record will be made of what you say, so
2 you should all the feel free to speak -- you should all feel
3 free to speak your minds.

4 Listen carefully to what the other jurors have to
5 say and then decide for yourself if the government has proved
6 the defendant guilty beyond a reasonable doubt. If you
7 decide that the government has proved the defendant guilty,
8 then it will be my job to decide what the appropriate
9 punishment should be. Deciding what the punishment should be
10 is my job, not yours. It would violate your oaths as jurors
11 to even consider the possible punishment in deciding your
12 verdict. Your job is to look at the evidence and decide if
13 the government has proved the defendant guilty beyond a
14 reasonable doubt.

15 I have prepared a verdict form that you should use
16 to record your verdict. You all have a copy of it, so let's
17 look at it, if you would, with me, please. You can see the
18 form begins by saying, "We, the jury, unanimously find the
19 following" and that's to emphasize that any checkmark on here
20 must represent the unanimous vote of the jury.

21 It says with respect to Count 1, it says with
22 respect to the charge in Count 1 of the Superseding
23 Indictment, which charges the defendant with being a
24 prohibited person in possession of a firearm and ammunition,
25 we find the defendant -- and your choices are not guilty or

1 guilty.

2 Then goes Count 2, and it says, with respect to the
3 charge in Count 2 of the Superseding Indictment, which
4 charges the defendant with being in possession of a firearm
5 with an obliterated serial number, we find the
6 defendant -- again, you have two choices, not guilty or
7 guilty.

8 It then goes to Count 3, and it says with respect
9 to the charge in Count 3 of the Superseding Indictment, which
10 charges the defendant with possessing with intent to
11 distribute buprenorphine, we find the defendant not guilty or
12 guilty.

13 Then there is a line for the printed name of the
14 person you chose as foreperson, and a signature, and the
15 date.

16 If you decide that the government has proved any of
17 the charges against the defendant beyond a reasonable doubt,
18 say so by having your foreperson mark the appropriate place
19 on the official form. If you decide that the government has
20 not proved any of the charges against him beyond a reasonable
21 doubt, say so by having your foreperson mark the appropriate
22 place on the form. Your foreperson should then sign the
23 form, put the date on it, and return it to me.

24 Remember that the defendant is only on trial for
25 the particular crimes charged in the indictment. Your job is

1 limited to deciding whether the government has proved the
2 crimes charged.

3 Let me finish up by repeating something that I said
4 to you earlier, nothing that I have said or done during this
5 trial was meant to influence your decision in any way. You
6 decide for yourselves if the government has proved the
7 defendant guilty beyond a reasonable doubt.

8 Finally, remember that if you elected to take notes
9 during the trial, your notes should be used only as memory
10 aids. You should not give your notes greater weight than
11 your independent recollection of the evidence. You should
12 rely upon your own independent recollection of the evidence,
13 or lack of evidence, and you should not be unduly influenced
14 by the notes of other jurors. Notes are not entitled to any
15 more weight than the memory or impression of each juror.
16 Whether you took notes or not, each of you must form and
17 express your own opinion as to the facts of this case.

18 All right. Let me briefly see counsel at sidebar.

19 (Sidebar conference held on the record
20 at 12:06 p.m. as follows:

21 THE COURT: Mr. DePorre, any objection to the
22 instructions as read to the jury?

23 MR. DePORRE: The government has no objections.

24 MR. LONGSTREET: Sir, no, sir.

25 THE COURT: So the defense has no objections to the

1 instructions; is that correct?

2 MR. LONGSTREET: Sir, no, sir.

3 THE COURT: I tried to ask that in a positive way.

4 Do you have any objections?

5 MR. LONGSTREET: Sir, no, sir.

6 THE COURT: Okay. Thank you.

7 (Sidebar conference concluded at 12:06 p.m.)

8 THE COURT: Okay. Ladies and gentlemen, the next
9 step is to pick the two folks who will be our alternate
10 jurors. Ms. Ryan has poker chips with the numbers 1
11 through 14 on them. She will draw two chips out of there,
12 and the two folks sitting in the seat that correspond to the
13 chip number be our alternative jurors.

14 A couple points about the folks chosen as
15 alternates. Your service continues, even if you are
16 designated as the alternate, because sometimes we have,
17 during deliberations, a juror falls ill, or we have a problem
18 and we have to replace that juror with an alternate juror.
19 So even if you are designated as an alternate, that means you
20 won't deliberate right now, but you should not talk about the
21 case with anybody until you hear from the Court that we have
22 reached a verdict, and then you can talk to other people
23 about the case.

24 And because we ordered you guys lunch, I don't want
25 the alternates to lose out on lunch. So this is what I want

1 to recommend: We'll pick the alternates, and I suggest that
2 you guys adjourn for your lunch. Do not talk about the case,
3 at all, with the alternates there. Have a nice relaxing
4 lunch. We got you lunch from my all-time favorite place
5 across the street. Finish your lunch, then the alternates
6 will excuse themselves, and only at that point should you
7 pick your foreperson and begin your deliberations. No
8 deliberations with the alternates present, please. So have a
9 nice enjoyable lunch.

10 All right. Our first alternate is in seat
11 number 1, that is Ms. Zatsick. And our second alternate is
12 in seat number 10, that Ms. Tokarczyk. Again, you still are
13 on duty, even though you won't be participating in the
14 original deliberations. We will let you know when and if we
15 get a verdict, but you can still enjoy the wonderful lunch.

16 So the last thing I need to do is administer the
17 oath to Ms. Ryan.

18 Do you solemnly swear you will keep all members
19 sworn upon this panel in some private and convenient place,
20 and that you will permit no one to communicate with them, nor
21 communicate with them yourself, except to inquire if they
22 have agreed upon a verdict, until discharged by this Court,
23 so help you God?

24 THE CASE MANAGER: I do.

25 THE COURT: Okay. Will you please take our jurors

1 out for lunch. Please do not deliberate until the alternates
2 have excused themselves.

3 THE CASE MANAGER: All rise for the jury.

4 (Jury excused at 12:09 p.m.)

5 THE COURT: All right. Please be seated. The jury
6 has left the room.

7 Mr. DePorre, anything on behalf of the government?

8 MR. DePORRE: No, Your Honor.

9 THE COURT: Mr. Longstreet, anything from
10 Mr. Garza?

11 MR. LONGSTREET: Nothing, no, sir.

12 THE COURT: If you guys would not stray too far.
13 And if you could make sure Ms. Monda has a way to contact you
14 by cellphone if you are going to leave. We will let you know
15 as soon as we hear anything, if we do, from our jury. So
16 thank you very much. We are done with this.

17 (Proceedings adjourned at 12:10 p.m.)

18 — — —

19 (At 2:05 p.m. Court reconvenes; Court, counsel and
20 Defendant present.)

21 THE COURT: Okay. All right. It's 2:05. We are
22 back on the record.

23 Mr. DePorre, you are with us for the government.
24 Mr. Longstreet, I see you and Mr. Garza have rejoined us as
25 well. Thank you for coming back so quickly.

1 I wanted to go on the record. We have a note from
2 the jury. It was sent at 1:25, and it asks for certain
3 pieces of evidence. They are asking for Exhibits 4C, 5B, 5C,
4 and then 11B, 11C and 4B. They have little asterisks next to
5 11B and 11C and 4B with a note that says really want to see
6 those. Then it also says picture of gun, 5F. And it is
7 signed Brandon, the foreperson, and dated today. It was sent
8 at 1:25.

9 So I wanted to convene and go on the record and
10 talk about how to proceed. What I want to propose is the
11 following: That we send back to the jury all of the tangible
12 exhibits, the documents, the photos, stuff like that so they
13 can review that in the jury look. But some of the exhibits
14 they have asked to review are tape recorded evidence, and
15 what I want to propose there that rather than sending the
16 recording back to the jury room, that we bring the jury into
17 the courtroom, that we empty the courtroom entirely of
18 everybody other than the jury and Ms. Ryan, who would be
19 here, and Ms. Ryan would play any of the audio exhibits they
20 wish to hear and play it as many times as they want. The
21 jury would be instructed to merely listen while sitting in
22 here, to conduct no deliberations, and then once they have
23 heard the tapes, they could return to the jury room. And if
24 they need to hear them again, we can do the same exercise.

25 But before we bring them in and do that, I wanted

1 to make sure that both sides are okay proceeding that way, or
2 if there are concerns or objections, I would be pleased to
3 hear those.

4 Mr. DePorre, the government's position, please.

5 MR. DePORRE: Your Honor, we have no objection with
6 the proposal in terms of viewing the physical exhibits and
7 the -- bringing the jury in to listen to the audio exhibit.
8 There are also physical exhibits that are a firearm,
9 ammunition and the Suboxone, and when you read those exhibits
10 off, I didn't have a chance to make sure that none of those
11 were included.

12 THE COURT: Right. Good point. Under no
13 circumstances do we send a firearm back. If they want to
14 look at it, it would be the same deal; we will put it in the
15 courtroom, and they could look at it here. We are not going
16 to send a firearm back in the jury room, but I don't think
17 then asked for that.

18 So to be clear what would go back to the jury is
19 the documentary evidence, not the ammunition, not the gun,
20 not the Suboxone. All documents would go back. And the
21 audio recordings and those three pieces of evidence would be
22 in the courtroom if they wanted to look at them.

23 MR. DePORRE: That sounds good. Would you mind
24 running through the list again?

25 THE COURT: Sure. Ready?

1 MR. DePORRE: Yep.

2 THE COURT: It's 4C, 5B and 5C. Then there is
3 picture of gun, 5F. And then the ones that were denoted
4 "really want to see" were 11B, 11C and 4B.

5 MR. DePORRE: All right. 5F is actually the gun
6 itself, it is not a photo of gun.

7 THE COURT: It's the gun itself?

8 MR. DePORRE: Yes.

9 THE COURT: Now --

10 MR. DePORRE: I mean, they will have photos of the
11 gun that are going to go back in 5D and E, but 5F that could
12 just be --

13 THE COURT: So what we'll do is I'm going to tell
14 them we'll send the photos back, but if they feel the need to
15 look at the gun -- physically look at gun again we'll make
16 arrangements for that. We are not going to do that right
17 now.

18 MR. DePORRE: Very good.

19 THE COURT: Mr. Longstreet, are you okay with that?

20 MR. LONGSTREET: Yes.

21 THE COURT: Everybody ready to bring in the jury,
22 Mr. DePorre?

23 MR. DePORRE: Are --

24 THE COURT: What I want to do is bring them in here
25 and I want to instruct them in terms of how this will go, and

1 then we will all clear out.

2 THE CASE MANAGER: They will have to go out again
3 because they have to remove him.

4 THE COURT: That's fine.

5 Mr. Longstreet, you are okay with this way of
6 dealing with the evidence?

7 MR. LONGSTREET: Yes.

8 THE COURT: Okay.

9 THE CASE MANAGER: All rise for the jury.

10 (Jury entered at 2:11 p.m.)

11 THE COURT: Please be seated.

12 I hope everybody enjoined their lunch from my
13 favorite place in the western world.

14 Ladies and gentlemen, we received a note from you
15 asking to see -- to review certain exhibits. I wanted to
16 just review with you briefly our plan for having you review
17 the exhibits.

18 First, what we've decided is that we will send back
19 into the jury room all of the documentary exhibits, that
20 includes photographs of stuff and the other documents that
21 were admitted into evidence.

22 With respect to the firearm itself, that's not
23 going to go back nor is the ammunition or the Suboxone. But
24 there's photos of the firearm that were admitted as exhibits
25 and those will be going back with you.

1 We also received an indication that you wished to
2 hear certain recorded evidence, and we have a procedure for
3 doing that. What we are going to do is instead of sending
4 the audio recordings back for listening in the jury room, we
5 are going to clear the courtroom of everybody, including me,
6 except Ms. Ryan, and she is going to play whatever recordings
7 you guys wish to hear. But while she is with you, you are
8 not to discuss this at all. This is just listening and
9 telling her we want to hear 11B or whatever it is you want to
10 hear, you just identify it. If you want to hear it again you
11 say one more time. If you want to hear it ten times you say
12 keep playing it. Absolutely no discussion about the case in
13 Ms. Ryan's presence. Once you guys have heard all of the
14 recordings that you wish to hear for this point, you will
15 then go back in the jury room, and once you're back in there
16 with the door closed you can then reconvene your
17 deliberations and resume your discussions. If at a later
18 point you need to hear more audio evidence again, not a
19 problem, we'll bring you back in and we will do the same
20 procedure. I won't bore with you why we do things this way,
21 but that's the way we do.

22 So what we'll do now is go through a process of
23 clearing the courtroom, but for now we're going to put you
24 back in that room, and once we are all out of here other than
25 Ms. Ryan, we will bring you back in and do that exercise.

1 Thank you very much.

2 THE CASE MANAGER: All rise for the jury.

3 (Jury excused at 2:14 p.m.)

4 THE COURT: Okay. The jury is out.

5 So I'm going to ask if the marshals will return
6 Mr. Garza to the lockup. The rest of us will all clear out
7 of here. The only live person will be Ms. Ryan. She will
8 play the recordings that they asked, and then we will hand
9 them the documents to go back into the jury room. We will
10 let you guys know if we hear from them again. Thank you.

11 (Court recessed at 2:15 p.m.)

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13 (Court reconvened at 3:27 p.m.; Court, Counsel and
14 Defendant present.)

15 THE COURT: Please be seated.

16 The record should reflect Mr. DePorre is here and
17 Mr. Garza has rejoined us as well with counsel.

18 We've received another note from the jury, and the
19 jury has asked -- this is a note written at 3:15, and I will
20 read it verbatim in the record.

21 "Does Count 1 and Count 2 have to go hand in hand?
22 So if guilty for one does that automatically mean guilty for
23 the other?" And it is signed Brandon, the foreperson.

24 Mr. DePorre, your thoughts?

25 MR. DePORRE: I think it is an easy answer, but I

1 don't know how to get that answer to the jury. No, that they
2 have to assess each count independently, and they have to
3 find every element beyond a reasonable doubt for all three
4 counts if they -- for each count that they convict on.

5 THE COURT: Mr. Longstreet, your thoughts.

6 MR. LONGSTREET: I will have to say they have to
7 consider each individual charge individually.

8 THE COURT: So you agree the answer to the question
9 is no, they don't have to go hand in hand.

10 MR. LONGSTREET: That's correct.

11 THE COURT: So my proposal is while we are all here
12 with Mr. Garza here, to call them in and on the record read
13 this question out loud and then answer it in the way that we
14 just discussed. Does that work for you, Mr. DePorre?

15 MR. DePORRE: It does.

16 THE COURT: Mr. Longstreet?

17 MR. LONGSTREET: Yes.

18 THE COURT: Okay. Let's do it.

19 THE CASE MANAGER: All rise for the jury.

20 (Jury entered at 3:30 p.m.)

21 THE COURT: Please be seated.

22 Ladies and gentlemen, we have received a question
23 from you. I want to read it out loud and then give you an
24 answer.

25 The question that you have asked is: "Does Count 1

1 and 2 have to go hand in hand? So if guilty for one, does
2 that automatically mean guilty for the other?"

3 The answer to your question is no. The counts do
4 not go hand in hand. Each count must be considered
5 independently, and for each count you should determine
6 whether as to that particular count the government has proven
7 each and every element beyond a reasonable doubt. And,
8 again, you should consider each count independently, and your
9 decision with respect to any particular count is independent
10 of and stands alone your decision with respect to any other
11 count. So you are not boxed in if you decide one count a
12 particular way, that doesn't in any way dictate how you have
13 to decide any other count.

14 Again, the question with respect to each and every
15 count is did the government prove each and every one of the
16 elements beyond a reasonable doubt.

17 Before we send you back, let me just give you a
18 sense of schedule. Generally when I have juries deliberating
19 and there is an anticipation that the deliberations will
20 carry over to the next day, I end the day at 4:00 p.m. to
21 give everybody a chance to get out ahead of the traffic.

22 So in this case if you anticipate that your
23 deliberations will carry over into the next day, let us know
24 and we will end matters at 4:00. If you wish to stay longer
25 and continue your deliberations, that's fine, but I don't

1 anticipate staying tonight past 5:00.

2 The main point here I want to emphasize is I don't
3 want any time pressure in any way to impact your
4 deliberations. As I said earlier, you shouldn't reach a
5 verdict just to end the day, just to get out of here. The
6 stakes for both parties are far too high. So while I have
7 told you the schedule is for your convenience and for your
8 planning purpose, I want to impress upon you that the
9 schedule shouldn't in any way impact how you guys handle your
10 deliberations.

11 Okay. Let me see counsel at sidebar for one
12 second.

13 (Sidebar conference held on the record at 3:33 p.m.
14 as follows:

15 THE COURT: Mr. DePorre, are you comfortable with
16 the way I answered the jury's question?

17 MR. DePORRE: I am.

18 THE COURT: Anything else you want me to tell them
19 now?

20 MR. DePORRE: No. Thank you.

21 THE COURT: Mr. Longstreet, are you comfortable
22 with the answer?

23 MR. LONGSTREET: Yes.

24 THE COURT: Anything else you want me to tell them
25 now?

1 MR. LONGSTREET: No.

2 THE COURT: Okay.

3 (Sidebar conference concluded at 3:33 p.m.)

4 THE COURT: Ladies and gentlemen, thank you.

5 Please return to the jury room and continue your

6 deliberations.

7 THE CASE MANAGER: All rise for the jury.

8 (Jury excused at 3:33 p.m.; deliberations

9 continue.)

10 THE COURT: All right. The jury is out.

11 Anything, Mr. DePorre, for the government now that

12 they are gone?

13 MR. DePORRE: No. Thank you, Your Honor.

14 THE COURT: Mr. Longstreet?

15 MR. LONGSTREET: Pardon me.

16 THE COURT: Anything for Mr. Garza now that the

17 jury is out?

18 MR. LONGSTREET: No.

19 THE COURT: Okay. Thank you.

20 (Court adjourned at 3:34 p.m.; jurors released at

21 3:45 p.m.)

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C E R T I F I C A T I O N

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of USA vs. GARZA, Case No. 21-20405, on Tuesday, November 15, 2022.

s/Robert L. Smith

Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 07/22/2023
Detroit, Michigan